

Volume 25

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

UNITED STATES OF AMERICA,

Plaintiff,

VS.

SUSHOVAN TAREQUE HUSSAIN,

Defendant.

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NO. CR 16-00462 CRB

San Francisco, California

Tuesday, April 17, 2018

**TRANSCRIPT OF PROCEEDINGS**

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Official Reporters

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8:59 a.m.

P R O C E E D I N G S

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(Proceedings were heard out of the presence of the jury:)

**THE COURT:** Please be seated.

Okay. Let the record reflect the parties are present.

The jury is not present.

So last night I sent out -- did anybody get it? -- a suggestion as to a proposed instruction.

**MR. FRENTZEN:** We're fine with that, Your Honor.

**THE COURT:** Okay. Any comments, Mr. Marais?

**MR. MARAIS:** Well, yes.

**THE COURT:** I mean, other than, number one, you object to it. So, I mean, you're not -- by commenting on it, it's a question of whether you can offer some improvements over that instruction or there are things that I don't understand about it, and so forth.

**MR. MARAIS:** Your Honor, I think the first thing to note is that the field has shifted a little. The Government has now sent us an updated version of this list. So I just wanted to put that on the record by way of instruction.

I think, Your Honor, and we can get into the substance of the top 40 and the problems with the list if you want, but I think that the instinct yesterday that was most accurate was the way this should be done is a witness should come in and

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1 say, "Here's what I did. Here are the records I examined."  
2 And as Your Honor pointed out, you can write down "Number one,  
3 X, so much revenue; number two," and so on.

4 I don't think that this should need an instruction from  
5 the Court because if a 1006 summary is going to come in, it  
6 needs foundation. These charts are complicated. I don't know  
7 what accounting systems the Government has looked at.

8 As Mr. Frentzen pointed out yesterday, there's a system  
9 called ERP. There's a second system called NIBS. There's a  
10 third called Softrax. When Ms. Anderson compiled this list --  
11 not this list, a list -- my understanding is at first she  
12 looked at some of those systems, then she included at others.

13 I mean, the Court and the Defense needs to understand how  
14 this list came to be; and if the Government is going to bring a  
15 witness in to lay some foundation for it, then we can debate  
16 about whether it's accurate or not and at that point I think  
17 there wouldn't be any need for an instruction.

18 **MR. FRENTZEN:** They've got the data. It came from  
19 Ms. Anderson. They're aware of that. If they have a problem  
20 with it, we can either hear about it now or they'll  
21 cross-examine on it.

22 **MR. MARAIS:** Well, I don't --

23 **MR. FRENTZEN:** There's no -- excuse me -- there's no  
24 requirement under 1006 that we handwrite it and transpose and  
25 go back and forth.

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1 The point of the exercise is to get through it quickly  
2 and, you know, that's what we've done. This is not some  
3 outrageous summary. It's actually relatively simple and, you  
4 know, we're going to introduce today the data also that came  
5 from Steve Chamberlain that was sent to Sushovan Hussain that  
6 looks an awful lot like what we have but it's not exactly the  
7 same and, you know, it demonstrates that that was the system  
8 that they searched as well.

9 **THE COURT:** Well, my understanding is this witness  
10 could say -- by way of offer of proof he's going to say that  
11 looking at this list and this list reflects -- is an accurate  
12 reflection, an accurate reflection, of the underlying  
13 documentation, which are found in the files of HP.

14 **MR. FRENTZEN:** There's an intermediary step,  
15 Your Honor, which includes that another witness, who they  
16 cross-examined, Ms. Anderson, put the other spreadsheets. And  
17 so from those spreadsheets -- and she testified about the  
18 creation of those spreadsheets, and so from those  
19 spreadsheets --

20 **THE COURT:** He made the list from the spreadsheets?

21 **MR. MARAIS:** I don't think he made the list,  
22 Your Honor.

23 **MR. FRENTZEN:** Excuse me. It's a she. She's sitting  
24 over there.

25 **THE COURT:** She? Oh.

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1           **MR. FRENTZEN:** Yeah. Sorry. Agent Bryant.

2           **THE COURT:** Oh, it's the agent made the list. I don't  
3 know who made the list. I thought the witness made the list.

4           **MR. MARAIS:** I don't know either, Your Honor, and this  
5 list originally was designated for use with Mr. Sarin. Now  
6 it's designated for use with Special Agent Bryant.

7           **THE COURT:** That doesn't make a difference to me.  
8 What makes a difference to me is I'm looking at a list and I'm  
9 trying to figure out who made the list and what did they make  
10 it from.

11           **MR. FRENTZEN:** Special Agent Bryant went back,  
12 double-checked the list from Antonia Anderson's spreadsheets,  
13 which have been admitted into evidence and are voluminous.

14           **THE COURT:** Okay. So here's what we're going to do:  
15 We're going to continue with the witness. You can use the list  
16 with the witness. You can use it for demonstrative purposes.  
17 If, in fact, when she testifies she lays a sufficient  
18 foundation for the document, then I'll consider admitting it  
19 under 1006.

20           **MR. FRENTZEN:** Great.

21           **THE COURT:** That's easy.

22           **MR. MARAIS:** I think there --

23           **THE COURT:** Once again --

24           **MR. MARAIS:** I think there --

25           **THE COURT:** Once again I postponed the decision.

1           **MR. MARAIS:** I think there are some additional issues,  
2 Your Honor. There is some argument in this chart. You know,  
3 for instance, the Government has put in parentheses --  
4 Your Honor may not have a copy -- has put in parentheticals  
5 that some contracts are hardware and some contracts are  
6 software. There are rows on here, for instance row 14, which  
7 is Citigroup. That's a contract that we've heard testimony  
8 about that included hardware. The Government has decided not  
9 to put "hardware" in parentheticals.

10           **THE COURT:** Yeah, but I almost think that's a matter  
11 of cross-examination.

12           **MR. MARAIS:** I agree with that, Your Honor. I just  
13 wanted to flag it.

14           **THE COURT:** I think that's a matter of  
15 cross-examination. You know, "You didn't do this. You didn't  
16 do that," and so forth and so on. That seems to be cross.

17           But I think an adequate foundation has yet to be laid for  
18 the admission of it under 1006.

19           **MR. FRENTZEN:** Agreed. But if I lay that foundation,  
20 then we think it's coming in under 1006.

21           **THE COURT:** You want me to promise?

22           **MR. FRENTZEN:** No. I'm -- as with all evidence,  
23 Your Honor, I'm not used to arguing about eight things before  
24 we get to it. I'll lay a foundation and it will come in or it  
25 won't.



**YELLAND - DIRECT / REEVES**

1           **THE COURT:** Okay. Bring back the witness.

2           **MR. FRENTZEN:** Thank you, Your Honor.

3           **MR. MARAIS:** Thank you, Your Honor.

4           **THE COURT:** Bring in the jury.

5           (Proceedings were heard in the presence of the jury:)

6           **THE COURT:** Please be seated.

7           Good morning, ladies and gentlemen. Again, thank you for  
8 being so prompt.

9           We are continuing with the direct examination of  
10 Mr. Yelland, who's on the stand.

11                           **CHRISTOPHER YELLAND,**

12 called as a witness for the Government, having been previously  
13 duly sworn, testified further as follows:

14           **MR. REEVES:** Thank you, Your Honor. Good morning.

15           I'd like to pick up where we left off, if I could, please,  
16 and ask that Exhibit 2749 please be displayed. If we could go  
17 to page 4.

18                           **DIRECT EXAMINATION**    **(resumed)**

19           **BY MR. REEVES:**

20           **Q.** Do you recall your testimony, Mr. Yelland, about the  
21 preparation of this summary chart?

22           **A.** Yes.

23           **Q.** All right. And I'd like to go carefully through each of  
24 the quarters and have you testify about the findings that you  
25 made with regard to the consolidated reporting as a function of

1 the restated statutory accounts in the manner you described  
2 yesterday. Is that clear?

3 A. Yes.

4 Q. All right. For this first quarter of 2009, what were the  
5 originally stated revenues?

6 A. 129,780,000.

7 Q. And what was the total restated transactions in Q1 2009?

8 A. 14,240,000.

9 Q. And did that include an adjustment for Capax Discovery  
10 EDD?

11 A. Yes.

12 Q. Today do you have a recollection of the reason why the  
13 adjustment for Capax EDD was necessary?

14 A. Yes, because it was reciprocal with a purchase from  
15 Capax Discovery, which on examination we found didn't really  
16 have economic substance.

17 Q. As a result of the adjustments set forth in this portion  
18 of the summary, what is the restated revenue for Q1 2009?

19 A. 115,540,000.

20 Q. And in Q1 2009, what was the hardware revenue?

21 A. Zero.

22 Q. As a result of the restatement, what was the percentage of  
23 revenue that was restated?

24 A. 11 percent.

25 Q. And what was the percentage of restated revenue that

1 included hardware revenue?

2 **MR. DOOLEY:** Objection. The question is misleading.  
3 The Autonomy Corporation has --

4 **THE COURT:** I'm sorry. I can't hear you, Mr. Dooley.

5 **MR. DOOLEY:** I'm sorry.

6 The question is misleading. The Autonomy Corporation as  
7 group accounts were not restated.

8 **THE COURT:** Mr. Dooley's point is that you mentioned  
9 the wrong company with respect to the restatement; is that  
10 correct?

11 **MR. DOOLEY:** That's right.

12 **THE COURT:** I don't know the answer to that. Do you  
13 have a response?

14 **MR. REEVES:** I think the response is this is a summary  
15 that reflects the adjustments in the consolidated reporting  
16 based on the restatement.

17 **THE COURT:** Then why don't you bring that out.

18 **MR. REEVES:** I thought we had done that yesterday, but  
19 I'm happy to do that again.

20 **THE COURT:** Well, today is a new day.

21 **MR. REEVES:** Okay. All right.

22 **THE COURT:** Today is a new day. I mean, I can  
23 appreciate the fact that some of us go home at night and  
24 actually forget some of the finer details of the presentations  
25 that are made here. I'm not encouraging you not to remember

1 what happened two months ago or yesterday, but sometimes it's a  
2 good idea for an advocate to refresh everybody's recollection.  
3 I assure you, you will not run afoul of asked and answered.

4 Go right ahead.

5 **MR. REEVES:** Thank you very much.

6 **THE COURT:** Okay.

7 **BY MR. REEVES:**

8 **Q.** Do the summaries endeavor to correlate the restated  
9 statutory accounts to the consolidated group reporting?

10 **A.** Yes. They show the impact that the restatements in ASL  
11 would have had had we restated the group accounts.

12 **Q.** All right. And is that what is reflected in the  
13 terminology of your summaries, Mr. Yelland?

14 **A.** Yes.

15 **Q.** Continuing, what is the percentage restated in Q1 2009  
16 including hardware revenue?

17 **A.** 11 percent.

18 **Q.** Thank you very much.

19 Let's go to page 5. Is this the summary of revenue  
20 adjustments for the second quarter of 2009?

21 **A.** Yes.

22 **Q.** For the second quarter of 2009, what was the originally  
23 stated revenue?

24 **A.** 195,190,000.

25 **Q.** And in the second quarter of 2009, what was the total

1 restated transactions?

2 A. 24,090,000.

3 Q. And some of those transactions are broken out in this  
4 chart, are they not?

5 A. Yes.

6 Q. All right. And what is the total restated revenue in  
7 Q2 2009?

8 A. 171,100,000.

9 Q. What was the hardware revenue in Q2 2009?

10 A. 6,240,000.

11 Q. There's a transaction broken out underneath "Hardware  
12 Revenue" for Morgan Stanley in the amount of \$6 million. Do  
13 you see that?

14 A. Yes.

15 Q. Is that hardware revenue that you included in this  
16 quarter?

17 A. Yes.

18 Q. All right. What is the percentage restated for the second  
19 quarter of 2009?

20 A. 12.3 percent.

21 Q. And what is the percentage restated including hardware  
22 revenue for Q2 2009?

23 A. 15.5 percent.

24 Q. Thank you very much.

25 Let's go to page 6. Is this the summary of revenue

1 adjustments for the third quarter of 2009?

2 A. Yes.

3 Q. What was the originally stated revenue in the third  
4 quarter of 2009?

5 A. 191,610,000.

6 Q. What was the total restated transactions for the third  
7 quarter of 2009?

8 A. 9,570,000.

9 Q. As a result, what was the restated revenue for the third  
10 quarter of 2009?

11 A. 182,042,000.

12 Q. 192 or 182?

13 A. 182, yeah.

14 Q. All right. 182,040,000?

15 A. Yes.

16 Q. Okay. Thank you.

17 What was the hardware revenue in the third quarter of  
18 2009?

19 A. 37,640,000.

20 Q. And that hardware revenue is broken into -- four  
21 components of that are broken out. Do you see that?

22 A. Yes.

23 Q. What are the transactions here that are listed here for  
24 Citigroup, JP Morgan, Bloomberg, and Morgan Stanley? What do  
25 those mean?

1     **A.**   Well, those are hardware sales either to those customers  
2     or to resellers who then sell on to those end users.

3     **Q.**   All right.  What is the percentage restated revenue for  
4     this quarter?

5     **A.**   5 percent.

6     **Q.**   And what is the percentage restated including hardware  
7     revenue for the third quarter of 2009?

8     **A.**   24.6 percent.

9     **Q.**   Let's go to page 7, Exhibit 2749, page 7, please, the  
10    summary adjustments for the -- the summary of revenue  
11    adjustments for Q4 2009.  Do you have that?

12    **A.**   Yes.

13    **Q.**   All right.  For the fourth quarter of 2009, what was the  
14    originally stated revenue?

15    **A.**   223,110,000.

16    **Q.**   For the fourth quarter of 2009, what was the total  
17    restated transactions?

18    **A.**   60,410,000.

19    **Q.**   Let's go through some of these transactions.  Do you see  
20    the adjustment for MicroTech/Discover Technologies in the  
21    amount of \$9,052,000?

22    **A.**   Yes.

23    **Q.**   Do you have a recollection as to the reason for that  
24    adjustment?

25    **A.**   Yes.

1 Q. What is your recollection, please?

2 A. Our findings were that that deal was connected to the  
3 acquisition of another reseller called MicroLink and was  
4 wrapped up into the price that was paid for MicroLink; and that  
5 the soft -- the price of the software sold to Discover  
6 Technologies, actually via MicroTech, another reseller, was  
7 inflated.

8 Q. Let's go to the next entry, please, for FileTek. There's  
9 an adjustment for \$8 million. Do you see that?

10 A. Yes.

11 Q. Do you have a recollection as to the reason for that  
12 adjustment?

13 A. Yes.

14 Q. What is your recollection?

15 A. The sale to FileTek was connected to a purchase from  
16 FileTek of StorHouse software; and after making our inquiries,  
17 we determined that the purchase of StorHouse from FileTek did  
18 not have real economic substance to Autonomy and that the two  
19 transactions should, therefore, be netted against each other.

20 Q. Let's go to the next one, please. Capax Discovery/  
21 Eli Lilly & Company, there's an adjustment for \$5.99 million.  
22 Do you see that?

23 A. Yes.

24 Q. Do you have a recollection as to the reason for that  
25 adjustment?



1 A. Yes.

2 Q. What is your understanding of the reason for that  
3 adjustment?

4 A. So we found that that was what we term an accelerated VAR  
5 deal, so value added reseller deal. So the -- Autonomy was  
6 looking to do a deal with the end user, hadn't closed that deal  
7 in this quarter, sold the deal ostensibly to Capax, then  
8 continued to pursue the deal directly itself eventually closing  
9 the deal as Autonomy and had Eli Lilly route the payment  
10 through Capax.

11 And from our inquiries, we concluded that Capax were not  
12 actually really involved in that deal with the end user and  
13 were not really required to pay for that deal until the end  
14 user deal had been done and Autonomy had caused the monies to  
15 be routed through Capax to then pay Autonomy.

16 Q. When you use the term by your inquiries, do you mean by  
17 your review of the books and records of Autonomy?

18 A. Yes.

19 Q. Let's go to the Capax Discovery EDD transaction in the  
20 amount of \$4 million that was adjusted. Do you see that?

21 A. Yes.

22 Q. Do you have a recollection as to the reason for that  
23 adjustment?

24 A. Yes. So that's similar to the deal in the first quarter  
25 of 2009 where there is a reciprocal purchase from Capax for

1 services, which from our inquiry -- from our inquiries we  
2 determined that those services hadn't actually been used by  
3 Autonomy. So we saw it as a reciprocal deal, again without  
4 substance, that should be netted off.

5 **Q.** Let's drop down to the MicroLink/Discover Technologies  
6 transaction in the amount of \$2.3 million as an adjustment. Do  
7 you see that?

8 **A.** Yes.

9 **Q.** What is your recollection of the reason of this  
10 adjustment?

11 **A.** That was a deal that was sold to MicroLink for  
12 Discover Technologies, which formed part of a balance of  
13 accounts receivable to Autonomy, which, after MicroLink was  
14 acquired by Autonomy, was never paid by MicroLink. So we saw  
15 it as an example of an accelerated VAR deal which ultimately  
16 was never paid but was wrapped up into the accounting as  
17 MicroLink became part of the Autonomy group.

18 **Q.** The last specific transaction this quarter there's an  
19 entry for Sales Consulting/Poste Italiane in the amount of  
20 \$2.25 million in the fourth quarter of 2009. Do you see that?

21 **A.** Yes.

22 **Q.** What is your recollection of the reason for that  
23 adjustment?

24 **A.** We reviewed a number of sales by Autonomy in Italy and  
25 South America where it wasn't clear at the time of the sale

1 that the reseller could pay for the deals in question or would  
2 pay for the deals in question. We saw a pattern there in those  
3 territories, and we saw that ultimately the deal was not paid  
4 for and was either later written off or credited.

5 Q. There's an entry toward the bottom for hosting  
6 transactions in the amount of \$18.05 million as an adjustment.  
7 Do you see that?

8 A. Yes.

9 Q. Do you have an understanding, based on the work that you  
10 did for the restated statutory accounts, as to the reason for  
11 that adjustment?

12 A. Yes. That's a summary of a number of transactions.  
13 Autonomy had principally two types of SAS or service offering  
14 to customers related to archiving of company records or  
15 eDiscovery within company records. These had historically  
16 been sold as service deals.

17 Autonomy started to either sell to customers or actually  
18 take existing customers and reengineer the contract with the  
19 customers so as to construct these as to what appeared to be an  
20 upfront license followed by a hosting service.

21 We determined for both of those key service offerings that  
22 it was in -- that it was wrong to account for the license  
23 separately from the ongoing service and that it should still be  
24 accounted for as a service delivered to our customer over time.

25 Q. And when you say accounted for as a service over time, are

1 you talking about recognizing the revenue rateably over time?

2 **A.** Yes. Broadly it's as the service is consumed, but it has  
3 a similar effect to rateably over time.

4 **Q.** Thank you very much.

5 And so does this adjustment for hosting transactions  
6 include a restructuring of a Morgan Stanley hosting deal if you  
7 recall?

8 **A.** I don't recall exactly which transactions are in which  
9 quarters.

10 **Q.** All right. As a result of these adjustments for the  
11 fourth quarter of 2009, what was the total restated revenue in  
12 the fourth quarter of 2009?

13 **A.** 162,700,000.

14 **Q.** In the fourth quarter of 2009, how much hardware revenue  
15 was there?

16 **A.** 9,420,000.

17 **Q.** In the fourth quarter of 2009, what was the total  
18 percentage restated revenue?

19 **A.** 27.1 percent.

20 **Q.** And for the fourth quarter of 2009, what was the total  
21 percentage restated including hardware revenue?

22 **A.** 31.3 percent.

23 **Q.** Let's go to page 8, Exhibit 2749 for identification,  
24 page 8. Is this a summary of the revenue adjustments for the  
25 first quarter of 2010?

1 A. Yes.

2 Q. Mr. Yelland, what was the originally stated revenue for  
3 the first quarter of 2010?

4 A. 194,190,000.

5 Q. And what was the total amount of restated transactions for  
6 the first quarter of 2010?

7 A. 34,820,000.

8 Q. Let's go to some of those transactions. First there is an  
9 adjusted transaction for MicroTech/Biblioteca Apostolica  
10 Vaticana, the Vatican Library. Are you familiar with that  
11 adjustment in the amount of approximately \$11 million?

12 A. Yes.

13 Q. What is your recollection of the reason the revenue for  
14 the Vatican Library transaction needed to be adjusted in the  
15 first quarter of 2010?

16 A. So this we found again as an example of an accelerated VAR  
17 deal where Autonomy were trying to close a deal with the  
18 Vatican Library to electronically store its records. Autonomy  
19 were unable to close that deal in that quarter and ostensibly  
20 sold the deal to MicroTech who hadn't really been involved in  
21 the transaction. They were brought in right towards the end of  
22 that period.

23 MicroTech didn't pay for that transaction until around  
24 about a year later when Autonomy purchased from MicroTech a  
25 sales facility, largely sales training facility, known as

1 ATIC --

2 Q. In America is that also known as the ATIC?

3 A. Yes.

4 Q. Okay. Good. Go on.

5 A. -- which was purchased, invoiced, paid for very quickly  
6 and then MicroTech started to pay back Autonomy for this deal.

7 So we saw this as an accelerated VAR deal, which  
8 ultimately was paid for through a reciprocal transaction that  
9 didn't really have substance because we couldn't find any real  
10 evidence of the existence or real usage of such a facility; and  
11 the fast turnaround in terms of buying, getting invoiced, and  
12 paying for this facility appeared very strange.

13 Q. Let's go to the FileTek transaction. In the first quarter  
14 of 2010, there appears to be an adjustment of approximately  
15 \$8.5 million. Do you see that?

16 A. Yes.

17 Q. Do you have a recollection today of the reason for the  
18 adjustment for FileTek here?

19 A. That was an example of a reciprocal purchase, you know,  
20 both happening at the same time, the sale -- the sale and  
21 purchase. It was the purchase of FileTek StorHouse.

22 And, again, in speaking with R&D colleagues in our  
23 inquiries, they hadn't used this technology, already sold this  
24 technology. So, again, we saw this as an example of a  
25 reciprocal transaction without real substance.

1 Q. As a result of these adjustments, what was the total  
2 restated revenue for the first quarter of 2010?

3 A. 159,360,000.

4 Q. And in the first quarter of 2010, what was the total  
5 hardware revenue?

6 A. 11,840,000.

7 Q. In the first quarter of 2010, what was the total  
8 percentage restated for the revenue?

9 A. 17.9 percent.

10 Q. And for the first quarter of 2010, what was the total  
11 restated revenue including hardware revenue?

12 A. 24 percent.

13 Q. Let's go to page 9 of Exhibit 2749 for identification. Is  
14 this a summary of revenue adjustments for the second quarter of  
15 2010?

16 A. Yes.

17 Q. What was the originally stated revenue for the second  
18 quarter of 2010?

19 A. 221,130,000.

20 Q. And what was the total restated transactions and revenue  
21 for the second quarter of 2010?

22 A. 31,190,000.

23 Q. That includes a transaction involving Auxilium Tech, again  
24 for the Biblioteca Apostolica Vaticana (Vatican Library) in the  
25 amount of \$1.9 million, does it not?

1 A. Yes.

2 Q. Today do you have a recollection of the adjustment  
3 associated with this transaction involving Auxilium?

4 A. Yes.

5 Q. What is your recollection of the reason for this  
6 adjustment?

7 A. This is an example of an accelerated VAR deal. It's a  
8 further -- ostensibly a further sale of software for the  
9 Vatican Library to Auxilium.

10 We couldn't find a record of Auxilium being involved in  
11 the Vatican Library deal. Ultimately Auxilium never paid for  
12 this transaction, and over time it's then provided for as a  
13 doubtful debt, and then ultimately it's ultimately written off.

14 Q. Now, this adjustment is made in the statutory accounts in  
15 the second quarter of 2010; is that correct?

16 A. The statutory accounts are only prepared on an annual  
17 basis, but it is true that when we were doing the statutory  
18 accounts from the invoice that we saw, it appeared to be a  
19 Q2 2010 deal.

20 Q. All right. And the summary correlates to the restated  
21 statutory accounts as they were filed in the manner you've  
22 described, would you agree?

23 A. Correct. Yes.

24 Q. So after you filed the restated statutory accounts, did  
25 you do further work or give further consideration to which



1 quarter this transaction and this adjustment belonged?

2 **A.** Yes, we did.

3 **Q.** And what did you do?

4 **A.** We found a record that actually either this or the  
5 majority of this revenue had actually been accrued by Autonomy  
6 in the first quarter of 2010 as opposed to waiting until the  
7 invoice had been cut in the second quarter of 2010.

8 **Q.** And for that reason the adjustment may belong in the first  
9 quarter of 2010?

10 **A.** Correct.

11 **Q.** All right. Let me -- let's go to the restated revenue for  
12 the second quarter of 2010. What was the total restated  
13 revenue according to the work that you've done in this summary?

14 **A.** Notwithstanding the conversation we've just had about  
15 Auxilium, it's 189,930,000.

16 **Q.** Okay. Thank you.

17 And in the second quarter of 2010, what was the total  
18 hardware revenue in the quarter?

19 **A.** 31,060,000.

20 **Q.** In the second quarter of 2010, what was the total  
21 percentage of restated revenue?

22 **A.** 14.1 percent.

23 **Q.** And in the second quarter of 2010, what was the total  
24 percentage of restated revenue including hardware revenue?

25 **A.** 28.2 percent.

(Pause in proceedings.)

**MR. REEVES:** It's a team effort.

**Q.** Before we leave Q2 2010, let me direct your attention to the transaction for Capax/Eli Lilly & Company in the amount of \$5.99 million that does not have the parentheses around that. Do you see that?

**A.** Yes.

**Q.** Do you have an understanding -- first of all, tell us what the meaning of that entry as it appears here without the parentheses around it means. What does that mean?

**A.** That means we are adding positive revenue to the revenue originally stated.

**Q.** All right. And why are you doing that in this summary? Why are you adding positive revenue in this quarter for this transaction?

**A.** Because that is the quarter in which Autonomy actually closed the deal with Eli Lilly directly, so that is -- this is the quarter in which that revenue should be recognized. If you remember, we had reversed revenue or restated revenue in a negative way in a previous quarter.

**Q.** And then recognized the revenue in a positive way in the correct quarter?

**A.** Correct.

**Q.** And this is an example of that type of transaction?

**A.** Yes.

1 Q. All right. Let's go to the third quarter of 2010,  
2 Exhibit 2749, page 10. Is this a summary of revenue  
3 adjustments for the third quarter of 2010?

4 A. Yes.

5 Q. In the third quarter of 2010, what was the originally  
6 stated revenue?

7 A. 210,560,000.

8 Q. And in the third quarter of 2010, what was the total  
9 restated transactions?

10 A. 30,910,000.

11 Q. Among those transactions, there is a reference to  
12 FileTek/United States Veterans Administration Authority,  
13 \$10 million adjustment. Do you see that?

14 A. Yes.

15 Q. Do you have a recollection as to the reason for that  
16 adjustment?

17 A. Yes. This is an example of an accelerated VAR deal where,  
18 again, Autonomy's looking to make a sale to the DVA but isn't  
19 managed -- isn't able to close the deal in the quarter and so  
20 then ostensibly sells the deal to FileTek, who haven't really  
21 been involved in the transaction.

22 Ultimately Autonomy don't close the deal with the DVA.  
23 They make a further purchase of the StorHouse software from  
24 FileTek, which then enables FileTek to take the money that's  
25 paid by Autonomy and ultimately pay it back to Autonomy to

1 clear what appears to be the debt related to this deal.

2 Q. Okay. And below that there's a reference to an adjustment  
3 for Capax Discovery/Bank of America - Amgen in the amount of a  
4 \$9 million adjustment. Do you see that?

5 A. Yes.

6 Q. Today do you have a recollection as to the reason for this  
7 adjustment?

8 A. Yes.

9 Q. What is your recollection?

10 A. So this is an example of an accelerated VAR deal with  
11 Capax. So Autonomy are looking to close a deal with Amgen.  
12 The deal doesn't close in Q3 '10. Autonomy then sell the deal  
13 to Capax. Autonomy then close the deal directly with Amgen in  
14 Q4 of 2010. They then allow Capax, even though the deal  
15 originally is for end user Amgen, to consider the deal now for  
16 end user Bank of America, which is another transaction that  
17 Autonomy are pursuing during 2000 -- during 2010.

18 Q. All right. Thank you.

19 As a result, what is the total restated revenue for the  
20 third quarter of 2010?

21 A. 179,650,000.

22 Q. And in the third quarter of 2010, what is the total  
23 hardware revenue?

24 A. 26,800,000.

25 Q. In the third quarter of 2010, what is the total percentage

1 restated revenue?

2 A. 14.7 percent.

3 Q. And in the third quarter of 2010, what is the total  
4 percentage of restated revenue including hardware revenue?

5 A. 27.4 percent.

6 Q. Let's go to the fourth quarter of 2010, please,  
7 Exhibit 2749 at page 11. Is this, Mr. Yelland, a summary of  
8 revenue adjustments for the fourth quarter of 2010?

9 A. Yes.

10 Q. And in the fourth quarter of 2010, what was the total  
11 originally stated revenue?

12 A. 244,510,000.

13 Q. And in the fourth quarter of 2010, what was the total  
14 restated transactions?

15 A. 59,240,000.

16 Q. Let's go through some of these transactions.

17 Dropping down two there's a reference to  
18 Discover Technologies/Bank of America, an adjustment in the  
19 amount of approximately \$7 million. Do you see that?

20 A. Yes.

21 Q. Are you familiar with that transaction?

22 A. Yes.

23 Q. What was the reason for that adjustment?

24 A. So as I just mentioned, Autonomy were pursuing a deal with  
25 Bank of America. They were looking to close that in Q4 of

1 2010. There was a lot of pressure to do so.

2 Autonomy don't close the deal with Bank of America in the  
3 Q4 so, again, they ostensibly sell the deal to  
4 Discover Technologies as well as allowing the redirection of  
5 the deal we mentioned for the Amgen-Bank of America from Q3.

6 Q. For Capax?

7 A. Yes.

8 Q. All right. Go on.

9 A. Ultimately Autonomy complete the deal with Bank of America  
10 during 2011. They -- they use MicroTech as the reseller as  
11 they're completing the deal. Bank of America then pay  
12 MicroTech, who wrote the monies back through Discover Tech and  
13 Capax and then through back to Autonomy.

14 Q. Let's go to the next transaction, please. There's a  
15 transaction for Tikit/KPMG with an adjustment of approximately  
16 \$6.16 million. Do you see that?

17 A. Yes.

18 Q. What was the reason for that adjustment?

19 A. So Autonomy -- again, it's an accelerated VAR deal.  
20 Autonomy were looking to close a deal with KPMG. It doesn't  
21 close in this quarter, so they sell the deal to Tikit.  
22 Autonomy then close the deal directly with KPMG.

23 There is a side letter allowing Tikit -- if they don't --  
24 if Tikit doesn't close the deal with KPMG, the side letter  
25 provides for Tikit to provide some services to Autonomy that

1 Autonomy will pay for, and Autonomy also will allow Tikit to --  
2 to effectively use the transaction as a prepayment against  
3 other future sales that Tikit might do of Autonomy technology.

4 So it's a little bit complicated, but it ends up as being  
5 a kind of -- it has an element of reciprocal deal with the  
6 services; and from our inquiries, the services aren't used, and  
7 then the remainder of it is considered to be a prepayment  
8 against deals that are ultimately done.

9 Q. There is an adjustment for Video Monitoring Services  
10 (Hardware) in the amount of \$6.05 million. Do you see that?

11 A. Yes.

12 Q. What was the reason for that adjustment?

13 A. So at the time of both the hardware and the software sale,  
14 which you see on the next line, Autonomy also made a purchase  
15 from Video Monitoring Services; and from my inquiries, those  
16 services, which is provision of certain data feet, were not --  
17 were not really used by Autonomy. They may have done some  
18 demos with them, but they were not really used by Autonomy.

19 So there's an element of the combined deals, which we  
20 considered to be reciprocal; but also on the hardware deal, the  
21 hardware deal was done with very extended payment terms, up to  
22 two years to pay for the deal, and we didn't see -- that's  
23 unusual, and we would have expected to have seen a lot of  
24 analysis of the creditworthiness of Video Monitoring Services  
25 to be able to pay the debt off over such a period of time. We

1 didn't see that. Video Monitoring Services ultimately go into  
2 insolvency during 2011.

3 Q. Let's go to the MicroTech/U.S. Department of the Interior  
4 adjustment for approximately \$4 million. Do you see that?

5 A. Yes.

6 Q. What was the reason for that adjustment?

7 A. So the Department of the Interior were an existing  
8 customer for SAS services, the ones we mentioned earlier.  
9 Autonomy were looking to reengineer that deal to sell to move  
10 it into that license-plus-hosting construct. The DOI had  
11 declined to do the deal. Autonomy still sold the deal into  
12 MicroTech. There would have been no use for MicroTech to use  
13 software for end user DOI when Autonomy were in any case  
14 providing the services on an ongoing basis.

15 Ultimately the deal is never paid for and it's either  
16 credited or written off, I believe, in the dark period in 2011.

17 Q. When you say "the dark period," what do you mean?

18 A. I mean the period between July and September of 2011.  
19 It's a period in which the results of Autonomy are not  
20 published. Autonomy publishes its final quarterly results for  
21 Q2, which is ending June; but by then, you know, it's -- well,  
22 by October it's become part of the HP group and is no longer  
23 filing its quarterly statements -- isn't required to file  
24 quarterly statements.

25 So this period, the dark period, is not included in any



1 published Autonomy group results and doesn't form part of any  
2 HP published results so it's dark to the market.

3 Q. Okay. And that's a function in some ways of the  
4 acquisition that is announced in August and the closing of the  
5 acquisition in October 2011?

6 A. Yes.

7 Q. All right. Let's continue, if we could.

8 Now, let's go to the next entry for Discover Technologies/  
9 Bank of America. There's an adjustment for approximately  
10 \$3.5 million. What was the reason for that adjustment?

11 A. So that's connected to the other Bank of America  
12 transaction for 7 million here in that it's all part of the  
13 deal ultimately that's done directly with Bank of America.

14 The reason why this one is broken out is because the  
15 3.5 million is not invoiced to Discover Technologies in this  
16 quarter. The revenue is accrued by Autonomy. The paperwork  
17 behind the deal with Discover Technologies is actually  
18 completed in 2011 but it is backdated to Q4 2010.

19 Q. Let's drop down to Capax Discovery/Merrill Lynch -  
20 Bank of America. There's an adjustment for approximately  
21 \$1.66 million. Do you see that?

22 A. Yes.

23 Q. What was the reason for that adjustment, if you recall?

24 A. So that's -- Merrill Lynch is another -- is a part of  
25 Bank of America. There was another part of the transaction

1 that Autonomy were pursuing with Bank of America with  
2 Merrill Lynch.

3 Again, we found this to be an accelerated VAR deal. The  
4 deal is somewhat separate form the other Bank of America deal  
5 because it is with Merrill Lynch, but that deal again is done  
6 directly by Autonomy. And then actually Bank of America pay  
7 Autonomy for this one, and then the Merrill Lynch deal is  
8 either credited or written off again in the dark period.

9 Q. As a result of these adjustments and the other ones that  
10 are listed in this summary, what was the total amount of  
11 restated revenue for the fourth quarter of 2010?

12 A. 185,270,000.

13 Q. And for the fourth quarter of 2010, what was the total  
14 amount of hardware revenue?

15 A. 29,380,000.

16 Q. For the fourth quarter of 2010, what was the total  
17 percentage restated revenue?

18 A. Can we scroll down, please?

19 Q. Okay. Yes.

20 A. 24.2 percent.

21 Q. And for the fourth quarter of 2010, what was the total  
22 percentage of restated revenue including hardware revenue?

23 A. 36.2 percent.

24 Q. Let's go to the first quarter of 2011, page 12 of  
25 Exhibit 2749. Is this a summary of revenue adjustments for the

1 first quarter of 2011?

2 A. Yes.

3 Q. In the first quarter of 2011, what was the total  
4 originally stated revenue?

5 A. 219,790,000.

6 Q. In the first quarter of 2011, what was the total restated  
7 transactions?

8 A. 47,350,000.

9 Q. Let's go through some of those transactions. There's a  
10 transaction here for Capax Discovery/McAfee with a \$5 million  
11 adjustment. Do you see that?

12 A. Yes.

13 Q. Do you have a recollection as to the reason for that  
14 adjustment?

15 A. It's an example of an accelerated VAR deal where  
16 ultimately the debt from Capax Discovery I believe is credited  
17 again in the dark period.

18 Q. Let's go to the MicroTech LLC transaction in the amount of  
19 \$3.86 million as an adjustment. Do you see that?

20 A. Yes.

21 Q. Do you have an understanding as to the reason for that  
22 adjustment?

23 A. Yes.

24 Q. What is your understanding?

25 A. So Autonomy sold to MicroTech software and MicroTech were

1 then to supply support services I think to Bank of America, but  
2 we don't see any evidence of MicroTech providing support  
3 services to Bank of America.

4 They under the deal appear to have the right to invoice  
5 Bank of America but, in fact, the payments -- there are some  
6 payments from Autonomy to Capax Discovery supposedly for  
7 services provided, but we see no evidence of the services.

8 The -- the deal then in the dark period is canceled by  
9 Capax Discovery and Autonomy credit the remainder.

10 Q. MicroTech?

11 A. Sorry. By MicroTech.

12 Q. All right.

13 A. And Autonomy then credit the remainder of the balance.

14 Q. Okay. Let's go to the Discover Technologies/Prisa deal.  
15 There's an adjustment for approximately \$3.6 million. Do you  
16 see that?

17 A. Yes.

18 Q. What is the reason for that adjustment?

19 A. So that's an example of an accelerated VAR deal. So  
20 Autonomy were looking to close the deal with Prisa, but they're  
21 unable to do that in Q1 '11 so they sell the deal to  
22 Discover Technologies.

23 I believe ultimately the route by which  
24 Discover Technologies eventually paid for this deal or paid for  
25 the majority of this deal is through a purchase by Autonomy of

1 DiscoverPoint Engine, so Discover Technologies software.

2 Again, from our inquiries, Autonomy didn't use or resell  
3 that software, but that purchase enabled Discover Technologies  
4 to pay for the majority of the Prisa, and if you look lower  
5 down, ThinkTech deals, which is a similar example. The balance  
6 of the receivables from Discover Technologies is ultimately  
7 written off.

8 **Q.** So it looks like you drew in a transaction that is  
9 indicated here as Discover Technologies/ThinkTech in the amount  
10 of \$1.8 million as an adjustment. Is that what you meant by  
11 your last answer?

12 **A.** Yes.

13 **Q.** And so what was the reason for that adjustment relating to  
14 the sale to Discover Tech with the end user ThinkTech?

15 **A.** Very similar circumstances to Prisa.

16 **Q.** All right. And we skipped over MicroTech/Bank of Montreal  
17 with an adjustment of approximately \$2.88 million. Do you see  
18 that?

19 **A.** Yes.

20 **Q.** What was the purpose -- or what was the reason for that  
21 adjustment, please, if you recall?

22 **A.** That's an example of an accelerated VAR deal where  
23 Autonomy are looking to close a deal with Bank of Montreal.  
24 The deal doesn't close in Q1 '11. I can't recall whether the  
25 deal ultimately closes, but the invoice to MicroTech I believe

1 is credited in the dark period. It may have been written off.  
2 I think it was credited.

3 Q. All right. Let's go to the entry for Capax Discovery EDD.  
4 In the first quarter of 2009, there's an adjustment in the  
5 amount of approximately \$1.6 million. Do you see that?

6 A. Yes.

7 Q. What was the reason for that adjustment, if you recall?

8 A. Well, that's very similar to the earlier Capax EDD deals,  
9 which we found to be a reciprocal transaction. And the EDD  
10 services that Capax were supposed to be providing to Autonomy,  
11 the leader of the EDD business confirmed that they hadn't used  
12 those services.

13 Q. As a result of these adjustments, what was the total  
14 restated revenue in the first quarter of 2011?

15 A. 172,450,000.

16 Q. And in the first quarter of 2011, what was the total  
17 hardware revenue?

18 A. 20,090,000.

19 Q. In the first quarter of 2011, what was the total  
20 percentage of restated revenue?

21 A. 21.5 percent.

22 Q. And in the first quarter of 2011, what was the total  
23 percentage of restated revenue including hardware revenue?

24 A. 30.7 percent.

25 Q. Let's go to page 13 of Exhibit 2749, the summary of

1 revenue adjustments for the second quarter of 2011. Do you see  
2 that?

3 A. Yes.

4 Q. In the second quarter of 2011, what was the total  
5 originally stated revenue?

6 A. 256,250,000.

7 Q. And in the second quarter of 2011, what was the total  
8 restated transactions?

9 A. 31,670,000.

10 Q. One of those transactions involves Discover Technologies/  
11 Abbott Labs and an adjustment in the amount of approximately  
12 \$1.8 million. Do you see that?

13 A. Yes.

14 Q. What was the reason for that adjustment?

15 A. So this is an example of an accelerated VAR deal where  
16 Autonomy weren't able to close that deal with Abbott Labs in  
17 the quarter and so ostensibly sold it to Discover Technologies.

18 Q. Dropping down two more, there's a MicroTech/Hewlett  
19 Packard adjustment in the amount of \$7 million. Do you see  
20 that?

21 A. Yes.

22 Q. What was the reason for that adjustment?

23 A. So that's an example of an accelerated VAR deal where  
24 Autonomy were looking to sell a deal to Hewlett Packard I  
25 believe for use in services to USPS.

1 Q. Is that the Postal Service in the United States?

2 A. Yes.

3 Q. Go on.

4 A. Hewlett Packard confirmed that they didn't want to do this  
5 deal, at least not in this quarter. The deal, however, was  
6 still sold to MicroTech.

7 The resolution of that deal was that during the dark  
8 period, Autonomy supposedly purchased from MicroTech a federal  
9 cloud solution, which we saw being purchased, invoiced, paid  
10 within a matter of days; and then MicroTech then paid the money  
11 back for this deal to Autonomy the very following day.

12 And we see, even though the cloud solution was meant to  
13 be, you know, operational over a period of years, we didn't --  
14 it would be very unusual to pay for it all upfront, and you  
15 don't normally pay for an invoice the day after it's provided.  
16 And we saw no evidence of the cloud solution actually being  
17 constructed or provided.

18 Q. There is an adjustment for a transaction with the name  
19 Discover Technologies/Hyatt/Dell in the amount of approximately  
20 \$5.33 million. Do you see that?

21 A. Yes.

22 Q. If you recall, what was the reason for that adjustment?

23 A. That's an example of an accelerated VAR deal, which is  
24 ultimately either written off or credited later in the dark  
25 period.



1 Q. And as a result of these restated transactions, in the  
2 second quarter of 2011, what was the total restated revenue?

3 A. 224,580,000.

4 Q. And in the second quarter of 2011, what was the total  
5 amount of hardware revenue?

6 A. 20,850,000.

7 Q. In the second quarter of 2011, what was the total  
8 percentage of restated revenue?

9 A. 12.4 percent.

10 Q. And in the second quarter of 2011, what was the total  
11 percentage of restated revenue including hardware revenue?

12 A. 20.5 percent.

13 (Pause in proceedings.)

14 BY MR. REEVES:

15 Q. You might want to put your glasses back on because I'd  
16 like to show you page 2 of Exhibit 2749.

17 And we're going to need a little help back here. Thanks,  
18 guys.

19 Are you familiar with page 2 of Exhibit 2749, Mr. Yelland?

20 A. Yes.

21 Q. Let's start on the left-hand side and start with the  
22 title. It says "Summary of Revenue Adjustments (Detailed)-  
23 2009 to October 2011." Do you see that?

24 A. Yes.

25 Q. Are you rolling up in any way the quarterly summaries into

1 an annual summary in this portion of the summary?

2 **A.** For 2009 and 2010, yes. For 2011, it's the two quarters  
3 plus the dark period.

4 **Q.** Thank you very much.

5 Okay. And we have similar type of information but over  
6 different time periods arrayed in this summary, would you  
7 agree?

8 **A.** Yes.

9 **Q.** All right. Let's go and look at the year-end summaries  
10 for 2009. You have a "Revenue" column and a "Total" for 2009,  
11 do you not?

12 **A.** Yes.

13 **Q.** Let's go slowly through that. And if we can maybe move a  
14 little bit to the right so that we can see the -- let's get the  
15 column -- the row entries.

16 So this top row is -- let's go all the way to the left.  
17 Thank you so much. Thank you, Ms. Margen.

18 So the very top line is the "Original Stated Revenue";  
19 correct?

20 **A.** Yes.

21 **Q.** And then down below there are a series of the adjustments  
22 of the type that we've gone through in your testimony today;  
23 right?

24 **A.** Yes.

25 **Q.** And if we drop down to the bottom looking at the rows,

1 there's then a -- eventually a total adjustments in respect of  
2 restated transactions. You total the total amount of  
3 adjustments, do you not?

4 **A.** Yes.

5 **Q.** And then below that you have the total amount of restated  
6 revenue similar to what you'd done on the quarterly basis  
7 before?

8 **A.** Yes.

9 **Q.** And then below that you have the notations for the  
10 hardware revenue, do you not?

11 **A.** Yes.

12 **Q.** And you have percentages of restated revenue and  
13 percentages of restated revenue including hardware at the  
14 bottom?

15 **A.** Yes.

16 **Q.** So the format is similar to the quarterly format, but here  
17 we have information on an annualized or year-end basis?

18 **A.** Yes.

19 **Q.** All right. Now let's go to the totals for 2009 back at  
20 the top, please. Slide over to the right if we can. Okay.  
21 Nice. Great.

22 Okay. In 2009, year-end 2009, what was the total  
23 originally stated revenue?

24 **A.** 739,690,000.

25 **Q.** Let's drop down. We're going down the 2009 column to the

1 total restated revenue for 2009.

2 **A.** The total restated revenue -- the amount of the  
3 restatement is 108,310,000.

4 **Q.** Thank you.

5 And that gave a resulting total restated revenue of what  
6 amount?

7 **A.** 631,380,000.

8 **Q.** All right. And in year 2009, what was the total hardware  
9 revenue?

10 **A.** 53,300,000.

11 **Q.** We drop down, in 2009 what was the total percentage of  
12 restated revenue?

13 **A.** 14.6 percent.

14 **Q.** And in 2009, what was the total percentage of restated  
15 revenue including hardware revenue?

16 **A.** 21.8 percent.

17 **Q.** All right. Ready to do the same thing for 2010?

18 **A.** Yes.

19 **Q.** Let's slide on over to 2010.

20 In 2010, what was the total originally reported revenue?

21 **A.** 870,370,000.

22 **Q.** And in 2010, what was the total amount of adjustments to  
23 the revenue?

24 **A.** 156,160,000.

25 **Q.** And as a result, in 2010 what was the total amount of

1 restated revenue?

2 A. 714,210,000.

3 Q. What was the total amount of hardware revenue in 2010?

4 A. 99,080,000.

5 Q. As a result of the adjustments, what was the total  
6 percentage of revenue adjustments in 2010?

7 A. 17.9 percent.

8 Q. And in 2010, what was the total amount of revenue  
9 adjustments including hardware revenue?

10 A. 29.3 percent.

11 (Pause in proceedings.)

12 BY MR. REEVES:

13 Q. Thank you very much.

14 Mr. Yelland, in the year's long work that you devoted to  
15 the filing of the 2011 statutory account and the restatement of  
16 the 2010 statutory account for ASL, how much do you work -- how  
17 closely did you work with Antonia Anderson?

18 A. Very closely.

19 Q. For months would you say?

20 A. Yes, throughout 2013.

21 Q. How closely was Ms. Anderson involved in the calculation  
22 and adjustments that we've just gone through as reflected in  
23 your summary?

24 A. Very closely. She was responsible for doing this work  
25 along with a couple of other people full-time.

1 Q. And did you rely on her judgment and expertise in carrying  
2 out that responsibility?

3 A. Yes.

4 Q. All right. And did you find her a helpful colleague in  
5 working through this issue?

6 A. I find her very competent.

7 Q. I'd like to show you what has been marked for  
8 identification as Exhibit 1373, please. With luck, that will  
9 be in the stack in front of you. I believe that this is the  
10 Autonomy Systems Limited report and financial statements for  
11 31 December 2010.

12 MR. REEVES: I'd offer it in evidence, please.

13 THE COURT: Admitted.

14 (Trial Exhibit 1373 received in evidence)

15 BY MR. REEVES:

16 Q. You can look at it on the screen, Mr. Yelland.

17 A. I've got it here.

18 Q. Okay. Do you recognize this document?

19 A. Yes.

20 Q. Is this -- what is this? Is this -- what is this?

21 A. This is the financial statements for ASL for the year  
22 31st December 2010.

23 Q. If we could go to page 6 of Exhibit 1373, please, and go  
24 to the bottom if you would.

25 Who signed on behalf of ASL for this 2010 statutory

1 account?

2 **A.** (Witness examines document.) Mr. Hussain.

3 **Q.** In his capacity as a director of ASL?

4 **A.** I believe so, yes.

5 **Q.** All right. Mr. Hussain was your predecessor as the  
6 director of ASL, was he not?

7 **A.** Yes.

8 **Q.** I'd like to show you what has been marked for  
9 identification, please, as Exhibit 463. This is the Autonomy  
10 Systems Limited report and financial statements for  
11 31 December 2009.

12 **MR. REEVES:** I offer it in evidence, please.

13 **THE COURT:** Admitted.

14 (Trial Exhibit 463 received in evidence)

15 **BY MR. REEVES:**

16 **Q.** Is this the statutory account for ASL in the preceding  
17 year 2009, Mr. Yelland?

18 **A.** Yes.

19 **Q.** And I think I'm done with that. Thank you.

20 I'd like to show you, if I could, please, what is marked  
21 for identification as Exhibit 2732. That should be in your  
22 stack of documents. I believe this is a series of business  
23 records relating to the delivery of hardware in the second  
24 quarter of 2009. Do you have Exhibit 2732, Mr. Yelland?

25 **A.** Yes.

1 Q. Do you recognize these documents?

2 A. Yes.

3 Q. Did you have a chance to look through this in advance of  
4 your testimony and familiarize yourself with this exhibit?

5 A. Yes.

6 Q. Are you --

7 THE COURT: Admitted.

8 (Trial Exhibit 2732 received in evidence)

9 MR. REEVES: Thank you, Your Honor.

10 Q. Are these business records of Autonomy?

11 A. Yes.

12 Q. All right. And what do they relate to?

13 A. They relate to the ordering, purchase, and delivery of  
14 hardware from Hitachi to Morgan Stanley.

15 Q. In or around the second quarter of 2009?

16 A. Yes.

17 Q. Thank you very much. I'm done with that.

18 I'd like to show you, please, what has been marked for  
19 identification as Exhibit 3056, a portion of the general ledger  
20 relating to NA Holdings, Inc.

21 MR. REEVES: I offer it in evidence, please.

22 THE COURT: Admitted.

23 (Trial Exhibit 3056 received in evidence)

24 BY MR. REEVES:

25 Q. Do you have Exhibit 3056 in front of you?



1 A. Yes.

2 Q. All right. Let's go to page 2, please. And let's  
3 highlight, if we can, all of the entries -- well, let's start  
4 on the left-hand side. There's a reference here to  
5 NA Holdings. Let's just highlight one of those entries here.

6 Okay. Now, Mr. Yelland, as part of your work relating to  
7 the statutory accounts for ASL, did you become familiar with  
8 MicroLink and the possibility of a write-off of MicroLink debts  
9 in the amount of approximately \$16 million?

10 A. Yes.

11 Q. You're familiar with that portion of the work that you did  
12 with regard to the statutory accounts?

13 A. Yes.

14 Q. Why don't you describe to us, please, what you did with  
15 regard to reviewing the books and records of Autonomy with  
16 regard to the write-off of \$16 million of debt relating to  
17 MicroLink and owed to Autonomy. What did you do?

18 A. So we could -- we -- we reviewed the ledgers of Autonomy,  
19 which showed at the time of the acquisition of MicroLink that  
20 Autonomy showed a \$23 million receivable from MicroLink. At  
21 the time of the acquisition, MicroLink's ledgers showed a  
22 payable to Autonomy of 16 million.

23 Subsequent to the acquisition, Autonomy received  
24 approximately 6 million payments from customers, not MicroLink,  
25 and applied those payments against the MicroLink balance.

1 Q. That brought it from 23 million down to what  
2 approximately?

3 A. Approximately 17.

4 Q. Go on.

5 A. There's another million of the debts that were made up of  
6 small receivables that do appear over time to have been paid by  
7 MicroLink to Autonomy. So there were smaller deals in there  
8 that were being paid. That left a balance of 16 million.

9 Q. What happened to that balance of 16 million as --  
10 according to the books and records of Autonomy?

11 A. It was not paid by MicroLink to Autonomy, Inc., or any of  
12 the other Autonomy subsidiaries. Autonomy, Inc., took the  
13 trade receivable from MicroLink and Autonomy reclassified that  
14 as an intangible investment in the MicroLink subsidiary moving  
15 it into another entity called North American Holdings.

16 Q. And that's what we see in this Exhibit 3056?

17 A. Yes. So this is one of the steps by which Autonomy, Inc.,  
18 is moving the receivable from MicroLink to North American  
19 Holdings. North American Holdings then subsequently classifies  
20 that as an intangible investment.

21 Q. So what does it mean to reclassify \$16 million that's owed  
22 by MicroLink to Autonomy as an intangible asset or an  
23 investment in another Autonomy company NA Holdings? What does  
24 that mean?

25 A. So that means to me that Autonomy -- Autonomy did not

1 expect MicroLink to pay off those trade receivables, so North  
2 American Holdings is then considering it to be really an  
3 investment in its now subsidiary MicroLink.

4 Q. Why would you ever do that kind of maneuver, if you know?

5 A. I don't really know why you would do it other than you're  
6 not expecting the monies to be paid, and so they're  
7 reclassifying them somehow as an investment rather than --  
8 rather than writing them down.

9 But in MicroLink's ledgers we also see that they write off  
10 the payable to Autonomy, Inc., and they write off the  
11 corresponding inventory of purchased software and a receivable  
12 that they had in their books against Autonomy that Autonomy  
13 hadn't recognized. So from a trade point of view all of the  
14 debts are written out of all of the ledgers.

15 Q. Written off?

16 A. Yes.

17 Q. And moved over into NA Holdings --

18 A. Yes.

19 Q. -- in the way you've described?

20 Okay. Thank you very much.

21 A couple more things. You have described the dark period  
22 in the course of your testimony; is that correct?

23 A. Yes.

24 Q. And referred to certain credit memos or write-offs during  
25 the dark period. Do you recall that?

1 A. Yes.

2 Q. What is a credit memo?

3 A. A credit memo is the reverse of an invoice.

4 Q. Reverse of an invoice. What does that mean?

5 A. If you -- if you write a credit note, you're then saying  
6 that the customer no longer has to pay for the associated  
7 invoice or whichever part of the invoice the credit note  
8 relates to.

9 Q. All right. And in addition to credit memos in the dark  
10 period, was there -- there were also write-offs that you  
11 described in the course of your testimony this morning;  
12 correct?

13 A. Yes.

14 Q. Do those appear in the general ledger?

15 A. Yes.

16 Q. What is the general ledger for those of us who don't get  
17 to do what you do, Mr. Yelland?

18 A. The general ledger is the core accounting system of a  
19 company.

20 Q. I'd like to show you what has been marked for  
21 identification as Exhibit 3063.

22 MR. REEVES: This is a compilation of other exhibits  
23 that I've conferred with counsel about that are portions of the  
24 general ledger and credit memos, and I'd like to show it to  
25 Mr. Yelland and then offer it in evidence if I could, please.

(Trial Exhibit 3063 marked for identification)

**THE WITNESS:** (Witness examines document.)

**BY MR. REEVES:**

**Q.** In your preparation for your testimony, did you have a chance to look through a series of the general ledgers and credit memos relating to some of the write-offs and credit memos that you've described today?

**A.** Yes.

**Q.** Does that appear to be a set of the business records associated with those credit memos and general ledger entries regarding the write-offs?

**A.** Yes.

**MR. REEVES:** I offer it in evidence, please.

**THE COURT:** Admitted.

(Trial Exhibit 3063 received in evidence)

**MR. REEVES:** And, finally, a couple last little points but we're getting close, then it might be a good time for a break if you'd like, Your Honor.

**Q.** I'd like to show you another compilation of exhibits from the general ledger that has been marked for identification as Exhibit 3064. This is a set of general ledger entries relating to hardware broken out by quarters.

(Trial Exhibit 3064 marked for identification)

**BY MR. REEVES:**

**Q.** In your preparation for your testimony, did you look

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1 through general ledger entries relating to hardware,  
2 Mr. Yelland?

3 **A.** Yes.

4 **Q.** Do you recognize the general ledger entries relating to  
5 hardware that have been marked for identification as  
6 Exhibit 3064?

7 **A.** Yes.

8 **MR. REEVES:** I offer it in evidence, please.

9 **THE COURT:** Admitted.

10 (Trial Exhibit 3064 received in evidence)

11 **MR. REEVES:** Thank you very much.

12 (Pause in proceedings.)

13 **BY MR. REEVES:**

14 **Q.** When you began to work at Autonomy in the manner you've  
15 described in or around April, May, June 2012, did you become  
16 familiar with the facilities and office space at Autonomy?

17 **A.** Yes.

18 **Q.** At Autonomy's offices, were the conference rooms named  
19 after James Bond movie villains?

20 **MR. DOOLEY:** Objection. Objection, Your Honor.  
21 Relevance. 403.

22 **THE COURT:** Sustained.

23 (Pause in proceedings.)

24 **MR. REEVES:** Now might be a good time for a break,  
25 Your Honor.

1           **THE COURT:** Well, do you have anything further? I'd  
2 like you to finish with the witness.

3           **MR. REEVES:** I don't think I have more questions.

4           **THE COURT:** Okay. So almost. Almost.

5           **MR. REEVES:** I'd like to confer with my --

6           **THE COURT:** That's all right. That's all right.  
7 Let's take a recess, and you can review your notes.

8           Ladies and gentlemen, we'll be in recess at this time.  
9 We'll be in recess until a quarter of 11:00.

10           Remember the admonition given to you: Don't discuss the  
11 case, allow anyone to discuss it with you, form or express an  
12 opinion.

13           The witness may step down.

14           **THE WITNESS:** Thank you, sir.

15           (Proceedings were heard out of the presence of the jury:)

16           **THE COURT:** Okay. Let the record reflect that the  
17 jurors have left.

18           So there are a couple things that I wanted to raise. One  
19 is the request of the Defense to cross-examine Mr. Yelland on  
20 the issue of that statement. I don't -- I have so many papers  
21 up here. It's the -- it's the statement that was sent to -- it  
22 was an e-mail and attachment sent to the defendant by  
23 Mr. Chamberlain to which was attached a document. The document  
24 had -- it was a four-page -- three-page document and it had  
25 literally hundreds or so entries. However, it had an amount at

1 the end, which was about 1.4 million, to which the Defense  
2 asserts that that amount is consistent with the statement that  
3 was given to the federal board -- whatever they're called, the  
4 accounting board -- and, therefore, it should be admitted  
5 because, one, it is not hearsay. It's not being offered for  
6 the truth of the matter; that is, that there was 1.4 million or  
7 that all of those items were paid or not. So it's not hearsay.  
8 It's not introduced for the truth of the matter.

9 Rather, what it's being introduced for is to show, quote,  
10 the effect on the listener. That is to say, there isn't a  
11 serious question as to whether or not he received it. That was  
12 the habit and custom of the e-mails as they went through the  
13 system.

14 Number two, he requested information; therefore, he  
15 inquired I think of Mr. Chamberlain -- I may be wrong in  
16 this -- "What about this?" And this seems to be in response to  
17 his inquiry.

18 So, number three, it goes to his state of mind; that is to  
19 say, that he was at least told this and, therefore, it would  
20 have some relevance as to his response.

21 The Government responds in saying it is inadmissible  
22 hearsay. I don't think it is hearsay because it's not being  
23 introduced for the truth of the matter.

24 And it seems to me that the quarrel really between the  
25 two, as I understand it from what Mr. Frentzen said yesterday,



1 was not that it -- that the figures are, quote, "inaccurate" in  
2 that they don't reflect payments or they don't reflect  
3 write-offs or they don't reflect whatever they reflect, and  
4 there's no dispute that at the end it's 1.4 million.

5 What the Government says is, yeah, this was all a  
6 contrivance of a kind or an accounting fraud of a kind which  
7 resulted in 1.4 million. So nobody disputes that is  
8 1.4 million a number that was furnished and it's on the books  
9 and records of Autonomy. It was how they got that number and  
10 the improper way they came to that number that is of relevance  
11 here.

12 And I looked at it initially, and I think I'm still  
13 right -- it's nice for me to say I think I'm still right --  
14 that it's a statement in furtherance of the conspiracy, but the  
15 Government is not introducing it and they're objecting to it  
16 because they say -- well, I think I have to turn to  
17 Mr. Frentzen because I don't accept the argument that it's  
18 hearsay. I look upon it as a declaration, as a statement that  
19 was being told to a person at or about the time that he signed  
20 the document.

21 Then I sort of think in my own mind, well, what if  
22 somebody said -- just before you signed something, somebody  
23 said, "Hey, the number is 1.4." The head of the books,  
24 whatever Chamberlain did, he says, "Oh, you asked what the  
25 number is. The number is 1.4."

1 Now, let's say somebody -- somebody -- let's say somebody  
2 heard that. Whether it's true or not, it doesn't make any  
3 difference. It's what -- it's what the defendant thought. And  
4 so why couldn't you introduce it as a statement affecting his  
5 state of mind?

6 Putting it another way, let's say the statement was not  
7 1.4. Let's say it was 100 million or 50 million, and so forth.  
8 Certainly that would come in in some manner I would think.

9 So it seems to me that if it would come in for inculpatory  
10 reasons, I don't see why it wouldn't come in for whatever it  
11 is. And I think it's a matter of cross-examination. I think  
12 this is a perfect witness for it, by the way, because to the  
13 extent that the witness understands that document, maybe he can  
14 explain it. So I'm inclined to let it in.

15 Okay, Mr. Frentzen, your turn.

16 **MR. FRENTZEN:** Thank you, Your Honor.

17 With regard to the portion of it that is a rundown of  
18 numbers, this may be the appropriate witness.

19 With regard to the e-mail that it is attached to, this is  
20 not a good witness. This is not a witness who knows anything  
21 about it.

22 And unlike the situation -- what they want to argue is  
23 that, you know, the representations being made in there by  
24 Chamberlain is what the jurors should believe, that that is  
25 accurate, that what they're telling the FRRP is accurate.

1 And the problem here is that it -- well, it is inaccurate.  
2 And unlike *Payne*, the case that they cited, the witnesses who  
3 received the communication testified -- and I don't just say  
4 that as a -- I mean, this is a tree that falls in the woods; in  
5 other words, nobody that's on that e-mail is going to take the  
6 stand. There's one person who could and if he were, then he  
7 could describe what the effect was on him.

8 But the notion that we're going to get something out of it  
9 about the effect on the listener when the listener is not  
10 testifying is not consistent with what happened in *Payne*.

11 We've all been in the situation, Your Honor, where, you  
12 know, a cop says:

13 "What did you do next?

14 "I went to the scene.

15 "Why did you go to the scene?

16 "Because I heard on the radio there was a robbery."

17 Whatever. Okay. That's not for the truth of the matter  
18 asserted. That's to explain what this witness who's testifying  
19 did, why they went there, and that's the situation in *Payne*.

20 That's not the situation here because you have to go to  
21 that next step that we're all just going to make assumptions  
22 about what impact or what effect this had because we don't have  
23 any of the --

24 **THE COURT:** I agree that that's a difference from  
25 *Payne*, but here is the question -- and your analogy is right.

1 I mean, I understand that. What I'm trying to figure out is,  
2 obviously, the witness who -- the listener, who is the  
3 defendant in this case, is not required to testify, may not  
4 testify. I don't know whether he will or not.

5 Okay. And that is a distinction because you could ask the  
6 cop who says "I heard this and I went there." You can ask the  
7 cop all sorts of reasons. You can cross-examine whether the  
8 information that he got was valid and so forth.

9 In this case the listener isn't testifying, and the  
10 question is: Because the listener isn't testifying, does that  
11 then render the statement inadmissible? And that -- I haven't  
12 found that case that says it's inadmissible. That's number  
13 one.

14 Number two, it does come in. It is a business record. It  
15 is properly authenticated. Your argument with it is that you  
16 can't -- that you can't cross-examine how the listener reacted,  
17 but the listener reacted. Whether or not that document had  
18 anything to do with the witness' reaction is conjecture. It's  
19 conjecture.

20 But then the question is, then the question is: Would it  
21 be reasonable for a jury to draw the inference that, in fact,  
22 that statement influenced him, or is it not reasonable?

23 They'll argue it's reasonable. They'll say, "Here is the  
24 chief financial officer in response to a request, and then the  
25 defendant took certain -- an action and, therefore, it's

1 reasonable to assume it had some influence on him."

2 The Government, on the other hand, will say, "There's no  
3 basis for that. They were involved in a conspiracy. These are  
4 statements that were made," I think, "by a co-conspirator and,  
5 sure, they're covering their tracks."

6 I sort of go back to if you can't show that, you haven't  
7 shown any case at all. So I think that the -- I mean, I'm  
8 overstating it, Mr. Frentzen, I'm vastly overstating it; but if  
9 your argument is this is not really the witness, I would say  
10 that the problem with that -- you know the witness is  
11 Mr. Hussain or Mr. Chamberlain, neither of whom is available.

12 But the problem you have is -- or that I have is that  
13 cases come in in a particular way, and the Government goes  
14 first and the Defense goes afterwards; and if the Defense has  
15 to -- we can wait and rest. I can do this -- you know what?  
16 If that's a problem, I can wait till they get up in their case  
17 and they offer it. They say, "Here is the exhibit," which is  
18 exactly what they're doing now. And I can say, "Okay.  
19 Admitted." Because it's a business record, so forth and so on.

20 And then we bring Mr. Yelland back and question him about  
21 it, not "Did you know Steve Chamberlain? Do you know what the  
22 process is?" And so forth. You look at the document, the  
23 figures, and say, "How do you get that?" This is what they  
24 say.

25 **MR. FRENTZEN:** I think --

1           **THE COURT:** And I think we're making a big mountain  
2 out of something that really is of little consequence as I see  
3 it.

4           **MR. FRENTZEN:** I have some agreement with that,  
5 Your Honor, except Mr. Kecker made a big point once upon a  
6 time -- the Court may or may not recall it -- that, you know,  
7 MicroLink did not write this stuff off. He cross-examined on  
8 MicroLink's -- this stuff was not written off and that he was  
9 going to prove that through the accountant, which didn't  
10 happen.

11           So now to offer this e-mail -- in other words, his  
12 position was that the MicroLink stuff was not written off.  
13 Maybe only a very small part of it. I can pull this from the  
14 transcript from once upon a time.

15           What this e-mail does -- and I haven't heard them say  
16 they're not going to argue that what's represented in that  
17 e-mail is what occurred. They're actually offering it for the  
18 truth of the matter asserted, as I understand.

19           If they want to concede that what's in that e-mail is  
20 false, then we might be in a different position.

21           **THE COURT:** Well, that's all a matter of -- well, I  
22 mean, I'll tell you --

23           **MR. FRENTZEN:** Otherwise they're offering it for the  
24 truth, Your Honor.

25           **MR. KEKER:** Can we move on?

1           **THE COURT:** They're not offering it for the truth.

2           **MR. KANIG:** That's right.

3           **THE COURT:** You're ahead, Mr. Keker, so why should you  
4 say anything at this point?

5           **MR. KEKER:** Just because there's a couple of other  
6 e-mails that -- not e-mails --

7           **THE COURT:** Well, I don't know about those.

8           **MR. KEKER:** There's a couple of other documents, no,  
9 separate that will save time in the future. We have raised  
10 with them and asked them and we filed something that maybe you  
11 ought to look at, but Sarin and Gersh, we need to call back.

12           **THE COURT:** I'll get into all of that.

13           **MR. KEKER:** All right.

14           **THE COURT:** I'm just -- look, I'm just dealing with  
15 exactly what's in front of me, and what is exactly in front of  
16 me I'm going to permit.

17           And it seems to me I will give a cautionary instruction  
18 and I'll say, "Ladies and gentlemen, what is on this document  
19 and so forth is not admitted for the truth of the matter; that  
20 these amounts were correct, or these amounts reflect the  
21 transactions as they occurred, or that this is in response to  
22 the thrust of the inquiry. It simply is an act that occurred."

23           **MR. KANIG:** I'm sorry. Your Honor, may I be heard for  
24 a moment?

25           **MR. FRENTZEN:** One final request.

1           **THE COURT:** Pardon?

2           **MR. FRENTZEN:** One final request, Your Honor.

3           **THE COURT:** Yes, you can be.

4           **MR. FRENTZEN:** I understand them questioning  
5 Mr. Yelland, which I don't think they actually want to get  
6 into, on the numbers attached to the document.

7           **THE COURT:** Yeah.

8           **MR. FRENTZEN:** I'm asking that Mr. Yelland not be  
9 questioned about an e-mail that he never saw and had nothing to  
10 do with.

11           **THE COURT:** No, you don't have to show him the e-mail.  
12 It is the -- it is the attachment to the e-mail that  
13 Mr. Yelland would be questioned about, as I understand it.

14           **MR. FRENTZEN:** And he may or may not know about that  
15 particular document.

16           **THE COURT:** I don't know. You might ask him. Anybody  
17 thought about asking him? Showing him the e-mail -- showing  
18 him the attachment and seeing if he has any information on that  
19 subject? You certainly should do that.

20           Okay. Yes?

21           **MR. KANIG:** Your Honor, the whole document needs to  
22 come in.

23           **THE COURT:** It's going to come in.

24           **MR. KEKER:** It's coming in.

25           **THE COURT:** It's going to come in, but I'm going to



1 give a cautionary instruction about it.

2 **MR. KANIG:** As to the e-mail but not the business  
3 record that's attached to it is the only point of clarification  
4 because --

5 **THE COURT:** What?

6 **MR. KANIG:** -- the business record is being offered  
7 for the truth of the matter asserted. It's a general ledger  
8 document, which is precisely what Mr. Yelland has been  
9 testifying about, has been introduced for the truth of the  
10 matter. All we're asking is that that business record be  
11 admitted for the truth and the e-mail be admitted for the  
12 effect on the listener.

13 **THE COURT:** I don't understand the business record.  
14 No, if the business record -- now I'm completely turned around.  
15 If the business record, that is the e-mail, is offered for the  
16 truth --

17 **MR. KANIG:** No. The business record is the  
18 attachment.

19 **MR. KEKER:** No, let's -- we'll take what you said.

20 **THE COURT:** I'm totally confused. If you're drawing a  
21 line between the two pieces of paper --

22 **MR. KEKER:** We accept the ruling, admitted for state  
23 of mind, end of story.

24 **THE COURT:** Well, I'm not going to say "state of  
25 mind." All I'm going to say is it is being introduced -- well,

1 I think I have to say something about the state of mind. No, I  
2 think I will simply say it's not being introduced for the truth  
3 of the matter.

4 **MR. KEKER:** Correct.

5 **MR. FRENTZEN:** Thank you, Your Honor.

6 **THE COURT:** Okay.

7 **MR. KEKER:** Thank you.

8 **THE COURT:** And, I mean, I would just point out that  
9 there is no evidence in the record that Mr. Hussain had any  
10 reaction to that document at all, and that that would be --  
11 that would be a fair comment by the Government in their  
12 argument.

13 **MR. FRENTZEN:** Thank you, Your Honor.

14 **THE COURT:** So you understand that.

15 **MR. FRENTZEN:** Thank you, Your Honor.

16 **MR. KEKER:** You're going to say that to the Government  
17 but not to the jury?

18 **THE COURT:** Exactly.

19 **MR. KEKER:** All right. Thank you.

20 **MR. FRENTZEN:** But the Government can say it. Thank  
21 you, Your Honor.

22 **THE COURT:** Unless you want me to.

23 (Recess taken at 10:39 a.m.)

24 (Proceedings resumed at 10:49 a.m.)

25

1 (Proceedings were heard out of presence of the jury:)

2 **THE CLERK:** Come to order. Court is now in session.

3 **THE COURT:** Bring in the jury. Mr. Yelland should  
4 come up.

5 (Proceedings were heard in the presence of the jury:)

6 **THE COURT:** Please be seated. I'm sorry. I was  
7 distracted.

8 Okay. Mr. Yelland is on the stand. Let the record  
9 reflect all parties are present and the jury is present.

10 Mr. Reeves.

11 **MR. REEVES:** Thank you, Your Honor. No further  
12 questions.

13 **THE COURT:** Okay. Cross-examination.

14 **CROSS-EXAMINATION**

15 **BY MR. DOOLEY:**

16 **Q.** Good morning, Mr. Yelland. My name is Brook Dooley, and  
17 I'm one of the lawyers who represents Sushovan Hussain.

18 And good morning to the ladies and gentlemen of the jury  
19 as well.

20 Mr. Yelland, you and I have never met before, have we?

21 **A.** No.

22 **Q.** I'm going to briefly talk about your job history,  
23 Mr. Yelland.

24 You became a chartered accountant in 1993; correct?

25 **A.** Or 1994, but it was around that time.

1 Q. Then you worked a couple years at Arthur Andersen;  
2 correct?

3 A. I continued to work for Arthur Andersen for a short while  
4 after I was qualified, yes.

5 Q. Then you taught accounting after that?

6 A. Right.

7 Q. Then you went to work for Compaq?

8 A. No. I went to work for Rover Group first for  
9 approximately three years. Then I joined Compaq.

10 Q. You joined Compaq in 2000?

11 A. Yes.

12 Q. Then in 2002, HP acquired Compaq; correct?

13 A. Correct.

14 Q. You have more or less worked for HP ever since 2002;  
15 correct?

16 A. Until October of last year, yes.

17 Q. So you started at Compaq in 2000. HP acquired Compaq, and  
18 then you had various positions within HP between 2002 and then  
19 2012; right?

20 A. Yes. That's before the Autonomy -- yes.

21 Q. And then in 2012, you became the chief financial officer  
22 of the Autonomy business unit within HP; correct?

23 A. Yes.

24 Q. And then you stayed there until 2016; correct? You stayed  
25 at HP until 2016?

1 A. With HP until October 2017.

2 Q. 2017. Okay. That's when HP sold a portion of its  
3 business to Micro Focus?

4 A. Correct.

5 Q. And then you went to work at Micro Focus?

6 A. Yes.

7 Q. So all told, you spent, what, 15 years working for  
8 Hewlett-Packard?

9 A. Yes.

10 Q. You have spent a lot of time over the last few years with  
11 the HP lawyers and consultants working on this investigation;  
12 correct?

13 A. Yes.

14 Q. Just to highlight some interactions you've had with the  
15 different HP lawyers involved, in June of 2013, did you meet  
16 with lawyers from the Proskauer Rose firm?

17 A. Yes.

18 Q. You met with them for two days; right?

19 A. Yes. Approximately.

20 Q. And then you met again with some HP lawyers in June, later  
21 in June of 2014?

22 A. I don't recall. I met with HP lawyers reasonably  
23 regularly, yes.

24 Q. Okay. Well, let's just go through some more.

25 In January of 2015, you met with the Choate Hall law firm;

1 right?

2 A. I can't give you an exact date, but I did meet with  
3 Choate.

4 Q. And with a gentleman named Bob Frank, a lawyer from Choate  
5 Hall?

6 A. Yes.

7 Q. And you understand Mr. Frank and the Choate Hall law firm  
8 are one of the law firms working on HP's civil lawsuit against  
9 my client, Mr. Hussain?

10 A. Yes.

11 Q. And is it fair to say that Choate Hall is running that  
12 lawsuit, running that litigation? Do you know?

13 A. I don't know.

14 Q. And at that meeting, there was also a team of people from  
15 Price Waterhouse Coopers, do you remember that, at this meeting  
16 with Choate Hall?

17 A. I don't recall if PWC were there.

18 Q. Why don't you look in your -- you should have a thin white  
19 binder there, and there should be an Exhibit 5276.

20 THE COURT: I'm sorry. What exhibit is it?

21 MR. DOOLEY: It's Exhibit 5276. I'm just offering it  
22 to refresh recollection. I'm not offering it. I'm sorry,  
23 Your Honor.

24 THE COURT: Just show it to him.

25 MR. DOOLEY: Showing it to him.

1           **THE COURT:** 52 --

2           **MR. DOOLEY:** 76, Your Honor.

3           **THE COURT:** 5276. Okay. And what do you want him to  
4 look at?

5           **BY MR. DOOLEY:**

6           **Q.** Just the first page, Mr. Yelland. Does Exhibit 5276  
7 refresh your recollection that in January of 2015 you were at a  
8 meeting with lawyers from the Choate Hall law firm and  
9 individuals from Price Waterhouse Coopers?

10          **A.** I don't specifically recall the exact meeting, but I'm  
11 willing to accept what the minutes show on there.

12          **Q.** You understand, Mr. Yelland, that HP hired Price  
13 Waterhouse Coopers to conduct an investigation of the  
14 allegations of accounting irregularities at Autonomy; right?

15          **A.** I'm sorry. Could you repeat the question?

16          **Q.** You understand that Hewlett-Packard retained or hired PWC  
17 to conduct an investigation of alleged accounting  
18 irregularities at Autonomy; right?

19          **A.** Yes. Their investigation ran parallel with my  
20 investigation for the stats.

21          **Q.** We will come back to how those investigations interact.

22               In May of 2015, you were interviewed by HP's lawyers from  
23 the Morgan Lewis firm. Do you remember that interview?

24          **A.** I don't remember specific dates of -- but I did meet with  
25 Morgan Lewis.

1 Q. How many times would you estimate that you've met with  
2 Morgan Lewis?

3 MR. REEVES: Your Honor, I think he is represented by  
4 Morgan Lewis. I want to clarify that for the record. I  
5 object.

6 THE COURT: Well, I think there's another way of  
7 handling it. Just say "Haven't you -- can you estimate the  
8 number of times? Is it more than five, more than ten," so we  
9 can move on because actually there is no substance -- you can  
10 ask these questions, but every witness apparently has met  
11 multiple times with a number of people. The jury is very aware  
12 of that.

13 I think you can establish it in two questions, three  
14 questions, and then we can move on to the substance of his  
15 testimony.

16 MR. DOOLEY: I will move on from this question. But,  
17 Your Honor, this witness has interactions --

18 THE COURT: Just ask him questions because a colloquy  
19 actually takes more time than the question would. So just go  
20 right ahead, ask him the question.

21 BY MR. DOOLEY:

22 Q. Mr. Yelland, you understand that the lawyers from Morgan  
23 Lewis have been leading HP's investigation into Mr. Hussain and  
24 others from Autonomy; correct?

25 MR. REEVES: I object. He is represented by that law



1 firm. I object, Your Honor. That's his counsel.

2 **BY MR. DOOLEY:**

3 **Q.** Mr. Yelland, are you represented by the Morgan Lewis law  
4 firm?

5 **THE COURT:** Do you have an attorney? Maybe you don't  
6 think you have an attorney. A lot of people --

7 **THE WITNESS:** I have been represented by Morgan Lewis.  
8 Currently I have another legal firm representing me.

9 **THE COURT:** Okay. So not currently represented by  
10 Morgan Lewis, but in the past has been represented by Morgan  
11 Lewis.

12 And when you were -- during the course of this  
13 investigation -- I'll do it.

14 During the course of this entirety from 2012, I guess,  
15 '13, to the present time, have you met a number of times with  
16 various lawyers?

17 **THE WITNESS:** Yes.

18 **THE COURT:** Including the Government?

19 **THE WITNESS:** Yes.

20 **THE COURT:** And can you estimate the number of times  
21 you met with attorneys representing Hewlett-Packard or  
22 representing different companies or representing the Government  
23 or different individuals? Can you estimate the number of times  
24 you've done that?

25 **THE WITNESS:** In one capacity or another?

1           **THE COURT:** Yes. About how many?

2           **THE WITNESS:** I've probably spoken or met with someone  
3 from one of these law firms at least once a month.

4           **THE COURT:** At least once a month.

5           You've met with the FBI?

6           **THE WITNESS:** Yes.

7           **THE COURT:** A number of times?

8           **THE WITNESS:** Yes.

9           **THE COURT:** You met with the Government a number of  
10 times?

11          **THE WITNESS:** Yes.

12          **THE COURT:** Okay. So you've had quite a few meetings?

13          **THE WITNESS:** Yeah. There's been a lot to talk about.

14          **THE COURT:** Okay. And they've interviewed you and you  
15 have -- you've spoken with them; is that correct?

16          **THE WITNESS:** Yes.

17          **THE COURT:** FBI, United States government, Morgan  
18 Lewis. Who else is out there? Let's get them altogether. I  
19 don't want to keep doing this. Get them altogether.

20          **MR. DOOLEY:** Your Honor, I believe --

21          **THE COURT:** Just get them altogether and tell -- so I  
22 can get a question to him. I'm not testifying. He is. I'll  
23 do it if you can't do it.

24          Proskauer, have you met with the Proskauer firm?

25          **THE WITNESS:** Yes.

1           **THE COURT:** You met with the FBI, and you've met with  
2 Morgan Lewis?

3           **THE WITNESS:** Yes.

4           **THE COURT:** Who else, counsel?

5           **THE WITNESS:** Travers Smith.

6           **BY MR. DOOLEY:**

7           **Q.** You met with Travers Smith?

8           **A.** Yes.

9           **Q.** Travers Smith is also working on the civil case against  
10 Mr. Hussain in England; correct?

11          **A.** Yes.

12          **Q.** How many times have you met with Travers Smith?

13          **A.** Only a couple.

14          **MR. DOOLEY:** If I may, Your Honor, just ask --

15          **THE COURT:** Go ahead. Go ahead. Just ask.

16          **BY MR. DOOLEY:**

17          **Q.** Mr. Yelland, you testified that you have -- you were --  
18 you were for some period of time represented by Morgan Lewis;  
19 is that right?

20          **A.** Yes.

21          **Q.** And you were also represented by another lawyer,  
22 Mr. Lusky; is that right?

23          **A.** Yes.

24          **Q.** You have been interviewed -- you met a number of times  
25 with the prosecutors; correct?

1 A. Yes.

2 Q. And you met with them in 2015, 2016, numerous occasions,  
3 at least eight meetings with the prosecutors; right?

4 A. It may be as many as eight. Eight sounds -- eight sounds  
5 a little high, but I've met with them, yeah, maybe half a dozen  
6 times, somewhere in that range.

7 Q. On each of those occasions, you were joined at the meeting  
8 by both your lawyer, Mr. Lusky, and also the lawyers from  
9 Morgan Lewis for HP; correct?

10 A. Yes.

11 Q. And you know that HP's lawyers are here today in the  
12 courtroom; correct?

13 A. Yes.

14 Q. And the HP lawyer who is here in the courtroom is one who  
15 has attended your meetings with the Government; right?

16 MR. REEVES: I object, Your Honor.

17 THE COURT: Oh, no. Let it go.

18 THE WITNESS: They've attended most of them.

19 BY MR. DOOLEY:

20 Q. Okay. I want to turn to a topic that you testified about  
21 yesterday, Mr. Yelland, and that is the rebasing or  
22 rebaselining exercise.

23 In June of 2012, you were asked to conduct this review of  
24 Autonomy's revenue; correct?

25 A. Yes.

1 Q. And that's the exercise that was called rebaselining or  
2 rebasing; right?

3 A. Yes.

4 Q. And one of the objectives of the rebasing exercise was to  
5 understand better the size of Autonomy's business and, as the  
6 name suggests, set a baseline for expectations going forward;  
7 correct?

8 A. Yes.

9 Q. And another one of the objectives was to understand  
10 whether there were any accounting issues at Autonomy that  
11 needed to be addressed; correct?

12 A. Yeah. The potential scope, prevalence, the types of  
13 issues to be investigated further.

14 Q. And the rebasing exercise was not done, I think you said  
15 before, in contemplation of any Government investigation; is  
16 that right? It was done for business reasons?

17 A. I didn't know at that point where the investigations might  
18 lead to.

19 Q. And as part of this rebasing exercise that you carried out  
20 in 2012, you went back and you removed, as it were, or adjusted  
21 from Autonomy's 2010 and 2011 revenues, revenue from -- certain  
22 categories of revenue; correct?

23 A. Yes.

24 Q. If we could -- if I could direct your attention to Exhibit  
25 6799.

1 A. That is in the white folder?

2 Q. That is in the first volume of the black binder. It's the  
3 very last tab in that black binder.

4 THE COURT: 6799?

5 MR. DOOLEY: Yes. This is an email from Antonia  
6 Anderson to --

7 THE COURT: Let me get it. I just don't have it.

8 By the way, so we can move through this, if there's an  
9 objection -- if there is an objection, you have to raise it  
10 immediately; otherwise, I won't bother looking at the document  
11 and it can come in.

12 Is there an objection?

13 MR. REEVES: No, Your Honor.

14 THE COURT: Good. Okay. In.

15 (Trial Exhibit 6799 received in evidence)

16 (Exhibit published to jury.)

17 BY MR. DOOLEY:

18 Q. Do you have that -- do you see that, Exhibit 6799,  
19 Mr. Yelland?

20 A. Yes.

21 Q. And that's an email to you -- well, from Ms. Anderson to  
22 Nigel Curl at PWC, copy to you, "Subject: Rebasing exercise";  
23 right?

24 A. Yes.

25 Q. And if you look back at the last attachment, Attachment D

1 behind the last blue sheet, there is a memo that describes kind  
2 of the purpose of the rebasing exercise, right, and what was  
3 done?

4 **A.** The draft memo, yeah, in the back. Yep.

5 **Q.** And as part of the rebasing exercise, you removed from  
6 Autonomy's 2010 and 2011 accounts revenue from the sale of  
7 hardware; right?

8 **A.** Yes.

9 **Q.** And the reason that the hardware sales were removed was on  
10 the basis that such transactions would not be entered into  
11 going forward under HP management; right?

12 **A.** I don't think that was the only reason why we'd remove  
13 them. I was looking for what the real economic substance of  
14 the -- of the Autonomy software business was. And the  
15 standalone hardware transactions were not really part of that  
16 business.

17 And so I -- in the rebasing exercise, I effectively  
18 disregarded the hardware revenue when I was -- when I was  
19 showing what the true economic substance of the Autonomy  
20 software business was.

21 **Q.** You also made adjustments for revenue from so-called  
22 hosted-plus-license transactions; right?

23 **A.** Yes.

24 **Q.** That's upfront license revenue was removed and replaced  
25 with revenue charged ratably over the life of the contract;

1 right?

2 A. Yes.

3 Q. Similar to what you described to Mr. Reeves when you were  
4 talking about the summary -- the chart; right?

5 A. Yes.

6 Q. If you look at page 2, the basis for that, there is a  
7 heading that reads "adjustment: Remove upfront hosting  
8 revenue."

9 Second paragraph, "The basis for that adjustment is that  
10 under HP management, Autonomy will no longer enter into  
11 licenses for hosting transactions" and so forth.

12 Do you see that?

13 A. Not just yet. So we're on page 2, top of page --

14 Q. It's also on the screen. It's easier if we just call out  
15 the language on the screen.

16 A. So what was the question? Sorry.

17 Q. I'm -- the question is confirming that the basis for the  
18 adjustment, for taking out this hosted-plus-license revenue,  
19 was that under HP management, Autonomy would not be entering  
20 into licenses for hosting transactions, but will bill for the  
21 hosting as a service as it is performed. That was the reason  
22 why you took it out; right?

23 A. That's not the -- the whole reason or the -- or the --  
24 the -- the reason behind this paragraph and the reason why  
25 we're taking it out is because when I'm looking at the Autonomy



1 business in terms of its real economic substance, if you have a  
2 service being provided to a customer, particularly if it's an  
3 existing service and that has a ratable revenue stream over  
4 time, if that is re-engineered to create a short-term boost in  
5 license revenue and depresses the future services revenue, to  
6 me, that's a one-time artificial transaction and doesn't  
7 reflect actual value of the service that's being provided to  
8 the customer.

9 So when I'm looking at the economic substance of the  
10 business, I'm going to remove that construction and look at  
11 the -- the value of what is actually being provided to  
12 customers over time.

13 And that same reason is why I proposed and the management  
14 agreed going forward for Autonomy -- in HP for the Autonomy  
15 business that we wouldn't enter into such transactions going  
16 forward.

17 **Q.** And that's -- excuse me. That's what is reflected here.  
18 Under HP management, Autonomy's not going to enter into those  
19 transactions going forward; right?

20 **A.** Yeah. And I've been describing why.

21 **Q.** Okay. As part of the rebasing exercise, you also removed  
22 revenue for what you concluded were barter transactions or  
23 reciprocal transactions; correct?

24 **A.** For those transactions where they were reciprocal and they  
25 appeared not to have economic substance. A reciprocal

1 transaction in its own right is -- is not necessarily a reason  
2 to remove.

3 Q. The jury has heard that before.

4 And -- okay. And in addition, you also removed revenue  
5 where -- from -- derived from deals where you concluded that  
6 the revenue had been accelerated, right? That is reflected at  
7 the bottom of page 3?

8 A. I would just say at the moment in this first rebasing  
9 exercise, I would say it always appears as opposed to concluded  
10 because it was a preliminary exercise.

11 Q. Okay. The question is you removed revenue from -- derived  
12 from deals where you -- where it appeared that the revenue had  
13 been accelerated, right?

14 A. Yes.

15 Q. And that category included revenue from sales to resellers  
16 where it appeared that the revenue had been accelerated;  
17 correct?

18 A. Yes.

19 Q. And the result of all this that we've been talking about  
20 was a proposed adjustment to Autonomy's 2010 and 2011 revenues;  
21 correct?

22 A. In the rebasing, yes.

23 Q. And the rebasing exercise was -- it was an important  
24 exercise at HP; correct?

25 A. Yes.

1 Q. In fact, in November of 2012, as the jury has heard,  
2 Hewlett-Packard announced a writedown of the value of Autonomy;  
3 correct?

4 A. Hewlett-Packard did announce a writedown, yes.

5 Q. And the rebasing exercise that you conducted was one of  
6 the inputs into the writedown calculation, wasn't it?

7 A. Not directly.

8 Q. Was it indirectly an input into the writedown?

9 A. So the rebasing exercise would help me to understand the  
10 real size, the historical size, of the Autonomy business, and  
11 that and coupled with our current level of performance in 2012  
12 helped me form a view as to what the forecast might be going  
13 forward, and that in turn is one of the ingredients into the  
14 valuations that then lead or the revised valuations that lead  
15 into -- that lead into an impairment or a writedown being  
16 recorded against the Autonomy asset.

17 Q. Do you recall that you or people working for you,  
18 including Ms. Anderson, prepared more than 17 versions of the  
19 spreadsheet that documented the conclusions of the rebasing  
20 exercise?

21 A. Yes.

22 Q. Let's -- I'd like to show the witness Exhibit 6914. It's  
23 a spreadsheet. It's not in evidence and needs to be shown in  
24 native format on the screen.

25 THE COURT: Any objection?

1           **MR. REEVES:** I don't think so, Your Honor.

2           **THE COURT:** Admitted.

3           (Trial Exhibit 6914 received in evidence)

4           (Exhibit published to jury.)

5   **BY MR. DOOLEY:**

6   **Q.** Mr. Yelland, do you recognize Exhibit 6914 as one version  
7 of the spreadsheet documenting the results of the rebasing  
8 exercise?

9   **A.** Yes.

10 **Q.** If we could go up to the file information.

11 Do you see that -- it's showing, Jeff -- let's try that  
12 again. Can we call that back up, Jeff. There we go.

13 Do you see, Mr. Yelland, here in the file information that  
14 this is a document that was last modified in October of 2012  
15 and that it indicates that you're the person who last modified  
16 it? Do you see that?

17 **A.** I see that on the screen, yes.

18 **Q.** If we could go back to the IFRS summary tab. If we could  
19 look at the bottom of the screen and just focus in on that  
20 far -- well, just leave it right there.

21 Mr. Yelland, the table that's reflected here in Exhibit  
22 6914 at the bottom of this IFRS summary page -- this table  
23 reflects adjustments made to Autonomy's 2010 accounts as a  
24 result of the rebasing exercise; correct?

25 **A.** This isn't the exercise that actually adjusts the account,

1 but it starts with the numbers that were in the accounts, yes.

2 Q. And in the far left box, there is a header that reads  
3 "Revenue Base Rebaselining Review of Deals Over a Million  
4 Dollars." Do you see that's in all caps?

5 A. Yes.

6 Q. And underneath that header are rows showing the different  
7 categories of adjustments you took out of Autonomy's revenue  
8 that we discussed a moment ago; right?

9 A. Yes.

10 Q. So it shows the reduction for hardware sales, reduction  
11 for upfront license on hosting deals, for existing customers,  
12 new customers, reciprocal deals, accelerated revenue  
13 recognition. Those are the categories -- and then there are a  
14 couple others.

15 Those are the categories that you adjusted out in the  
16 rebasing exercise; correct?

17 A. Yes.

18 Q. And then the next column to the right shows the financial  
19 impact of those adjustments. That's the amount of revenue  
20 removed from the 2010 account for each category of revenue;  
21 right?

22 A. Yes.

23 Q. So, for example, you removed 105.6 million in hardware  
24 revenue for 2010; right?

25 A. Yes.

1 Q. Now, if we can scroll over to the right, look at the next  
2 three columns, there are three columns to the right of the  
3 impact on -- the last couple we looked at. The first reads  
4 "Not IFRS Compliant Confirmed." Then the next column to the  
5 right reads "Not IFRS Compliant Probable." And then the next  
6 column reads "Management Judgment U.S. GAAP Difference"; right?

7 A. Yes. That's what they read.

8 Q. And now if we go back down and look at the line for  
9 hardware revenue -- just scroll over so we can see it.

10 Perfect.

11 The hardware revenue of 105.6 million, that is categorized  
12 in the "Not IFRS Compliant Probable" column; correct?

13 A. Yes.

14 Q. It is not in the "Not IFRS Compliant Confirmed"; correct?

15 A. Yes. Because we hadn't conducted the real in-depth  
16 investigation to determine whether these -- these adjustments  
17 showing the economic size of Autonomy were actually errors,  
18 misstatements or not under IFRS. We hadn't really done that  
19 work yet.

20 Q. My question was just what column the numbers are in.

21 The -- if we go down to the "upfront license on hosting  
22 deals," you deducted 14.7 million for existing customers and  
23 23.4 million for new customers, and then if we go to the right,  
24 neither of those numbers appear in the "Not IFRS Compliant  
25 Confirmed"; right?

1 A. Right. We hadn't done the work yet.

2 Q. And then they don't appear in "Not IFRS Compliant  
3 Probable"; right?

4 A. Correct.

5 Q. They're all the way over in the next column for  
6 "Management Judgment or U.S. GAAP Difference"; right?

7 A. Correct.

8 Q. And as reflected in this exhibit, the reason, according to  
9 the exhibit -- the reason that the hosting revenue was removed  
10 was because of managerial judgment or because of differences  
11 between U.S. GAAP and IFRS; correct?

12 A. In this column I'm saying that is possibly the reason for  
13 it, yes.

14 Q. Now, if we go back over, you see that for both reciprocal  
15 deals and accelerated revenue recognition, neither of those  
16 deductions are categorized as confirmed to be not IFRS  
17 compliant; correct?

18 A. Correct. Again, we hadn't done the work.

19 Q. And they're in the -- some of it is in the probable  
20 category and then some of it is in the management judgment  
21 category; correct?

22 A. Yes.

23 Q. And, in fact, after doing this rebasing exercise in 2012  
24 that you said was an important exercise, you could only confirm  
25 6.4 million, if we look at the bottom -- 6.4 million in

1 confirmed revenue that was not IFRS compliant as reflected in  
2 this document; correct?

3 **A.** Can I clarify the use of one of my previous answers,  
4 please?

5 You -- you asked me if the rebasing exercise was  
6 important. The rebasing exercise, the deliverable from that  
7 formally was the PowerPoint and the rebasing exercise that were  
8 published at the end of June and a little bit in July.

9 This spreadsheet you see here was a follow-up request that  
10 I received from the HP controller which stood slightly to one  
11 side of the rest of the rebasing exercise.

12 So when you asked me what was important, I've -- I viewed  
13 the actual outcome of the rebasing exercise, which is in a  
14 PowerPoint at the end of June, as being the core deliverable.

15 **Q.** You agreed with me, though, that the rebasing exercise was  
16 important enough that you did over 17 versions of this  
17 spreadsheet; right?

18 **MR. REEVES:** Object. I think that misstates the  
19 evidence.

20 **THE COURT:** Well, the witness can answer. Would he  
21 agree with the --

22 **BY MR. DOOLEY:**

23 **Q.** You prepared over 17 versions of this spreadsheet?

24 **THE COURT:** You're not saying "would you agree with me  
25 that you prepared 17 versions of this?" Is that the question?



1           **MR. DOOLEY:** I'm asking him if he prepared more than  
2 17 versions.

3           **THE COURT:** That's already been testified to. So the  
4 question is -- I don't know what the question is.

5           **MR. DOOLEY:** I'll leave it, Your Honor. I'll leave  
6 it. I'll move on.

7           **Q.** Let's scroll up to the 2011 numbers at the top of the  
8 page. If we could zoom out a little bit, Jeff. There we go.

9           And for 2011, this exhibit reflects the same exercise  
10 where the revenue removed is described and then put into  
11 columns for "Not IFRS Compliant Confirmed," "Not IFRS Compliant  
12 Probable," and "Management Judgment"; correct?

13           **A.** Yes.

14           **Q.** And none of the revenue that was removed for hardware  
15 resale, hosting licenses, reciprocal deals, or accelerated  
16 revenue recognition -- none of that was categorized as  
17 confirmed to be IFRS noncompliant; correct?

18           **A.** At this point in time, no.

19           **Q.** And in -- for 2011, there was only \$2 million in revenue  
20 that was confirmed to be IFRS noncompliant; right?

21           **A.** At this point in time, no.

22           **Q.** And when you say "at this point in time," this was -- the  
23 date on the document we saw was October 3rd, 2012; right?

24           **A.** This was actually prepared and sent during July and just a  
25 couple of days after the -- the main exercise was concluded.

1 This wasn't an exercise that took months. It was an exercise  
2 that was done in a day.

3 Q. Well, the date --

4 THE COURT: I didn't hear. What did you say?

5 THE WITNESS: So the -- the rebasing exercise was --  
6 the first output of that was at the end of June and then there  
7 was a follow-up in July and that is a PowerPoint that describes  
8 the rebasing exercise. It doesn't go into IFRS.

9 I was asked to give a view of the IFRS -- of the IFRS  
10 conclusions of the rebasing. I was at that time actually  
11 uncomfortable to do that and I communicated that to my  
12 colleagues, that I was uncomfortable to do it because we hadn't  
13 done the work yet. But I was required to do it so I gave the  
14 best view of how far we'd got in a day or two.

15 And I was quite concerned about this being  
16 over-interpreted, so I was very cautious at this point in time  
17 to try to say that I was concluding something wasn't accounting  
18 compliant, when in the few weeks since we started the rebasing  
19 exercise, we clearly had not done the work to that depth to be  
20 able to conclude, which is why I said I was looking at the  
21 economic substance and the potential areas to investigate.

22 So I was actually uncomfortable to be asked to give  
23 conclusions at this point.

24 BY MR. DOOLEY:

25 Q. Let me just repeat what I think was my question, which is

1 the last modified date on this document that we looked at was  
2 October 3rd, 2012. "Yes" or "no," Mr. Yelland?

3 A. Yes.

4 Q. And the person identified as having last modified the  
5 document is yourself; correct?

6 A. Yes.

7 Q. And as reflected in this exhibit, as of that date,  
8 October 3rd, 2012, only \$8.4 million in revenue is identified  
9 as being confirmed to be noncompliant with IFRS; correct?

10 A. No.

11 Q. That's not what the document says?

12 A. So my conclusions in here are as of really that -- that  
13 period in July. I don't recall between July and October why I  
14 was really still -- or what part of this I was -- I was still  
15 changing to October, but we never republished the full outcome  
16 of the rebasing again after that July period. I never sent it  
17 on to HP's senior management after July.

18 So I wasn't trying to reconfirm to anybody or even myself,  
19 really, you know, high-level conclusions about IFRS compliance  
20 after July.

21 Q. Setting aside who you sent the document on to or not,  
22 Mr. Yelland, a simple question:

23 This exhibit, which is dated October -- which is -- which  
24 was last modified on October 3rd, 2012, shows only \$8.4 million  
25 in the column for "Not IFRS Compliant Confirmed"; correct?

1 A. That's what the document says.

2 Q. I want to talk about the restatement.

3 The -- the document that we're calling the restatement,  
4 which is Exhibit 2445, contains restated accounts for --  
5 Autonomy Systems Limited accounts for 2010 and then accounts  
6 for 2011 that had never been filed before; correct?

7 A. Correct.

8 Q. And you testified -- and let's just remind the jury that  
9 the restatement that we're talking about is not a restatement  
10 of Autonomy Corporation, the publicly-traded company that  
11 Mr. Hussain was the CFO of; right?

12 A. So Mr. Hussain was the CFO of the group, so he's the CFO  
13 of Autonomy Corporation Limited and all of its subsidiaries,  
14 including ASL.

15 Q. And the restatement -- the point is that the restatement  
16 was of a -- the accounts of a subsidiary of Autonomy  
17 Corporation; correct?

18 A. In the ASL accounts, yes.

19 Q. And ASL is a subsidiary of the group, Autonomy  
20 Corporation; correct?

21 A. Correct.

22 Q. And you testified yesterday that in the fall of 2000 --  
23 summer or fall of 2012, you were working on filing -- trying to  
24 file the ASL statutory accounts for 2011; correct?

25 A. Yes.

1 Q. And you were working on filing the 2011 ASL statutory  
2 accounts with ASL's existing auditors at Deloitte; correct?

3 A. Yes.

4 Q. And you were working with people at Deloitte, some of whom  
5 the jury knows. Mr. Welham, for example; correct?

6 A. Yes.

7 Q. Can you look at Exhibit 6800 in your binder. It's in  
8 Volume 2 of 3 of the big --

9 MR. REEVES: No objection, Your Honor.

10 THE COURT: Admitted.

11 (Trial Exhibit 6800 received in evidence)

12 (Exhibit published to jury.)

13 THE WITNESS: Did you say 6800?

14 BY MR. DOOLEY:

15 Q. 6800. It's the first exhibit in Volume 2.

16 A. Yes. I have it.

17 Q. And this is an agenda for a meeting with Deloitte on  
18 October 3rd to discuss the audit update; correct?

19 A. Yes.

20 Q. Is that the subject?

21 And that's a reference to the audit of the ASL accounts;  
22 correct?

23 A. Amongst other subsidiaries, yes. There were other  
24 subsidiaries as well, but, yes.

25 Q. And if you look at the -- just on the first and second

1 page of the agenda items, there is no discussion on here of  
2 hardware disclosures, is there?

3 **A.** No.

4 **Q.** If you look at -- there is no discussion of reciprocal  
5 transactions or barter transactions?

6 **A.** No.

7 **Q.** If you look at the second page, item 4, there are a couple  
8 of resellers identified there. Tikit, for example. But there  
9 is no mention of Capax on here; right?

10 **A.** No.

11 **Q.** And no mention of MicroTech or Discover Tech?

12 **A.** No.

13 **Q.** And there is no mention of restating the ASL accounts, is  
14 there?

15 **A.** No. But I would say this is Deloitte's document, not my  
16 document.

17 **Q.** I understand that. But the agenda for the meeting where  
18 you're discussing filing the ASL accounts, this agenda from  
19 October 3rd, 2012, has no discussion of any restatement of the  
20 ASL accounts, does it?

21 **A.** Not in Deloitte's agenda, no.

22 **Q.** Then on November 20th, HP announced its writedown of  
23 Autonomy's value; right? We've talked about that earlier.  
24 Correct?

25 **A.** I believe so, yes.

1 Q. And if you look at Exhibit 8237 --

2 THE COURT: I'm sorry. What is it?

3 MR. DOOLEY: 8237, Your Honor.

4 THE COURT: 8237. One moment. I don't have it on my  
5 list. 8237?

6 MR. DOOLEY: It's at the very --

7 THE COURT: My list stops at 8092 that I was just  
8 handed.

9 MR. DOOLEY: I apologize.

10 THE COURT: That's okay. But I have no idea what it  
11 is.

12 MR. DOOLEY: Do you have the --

13 THE COURT: I've got a lot up here. I guarantee you,  
14 I must have everything, but I don't have 8207.

15 MR. DOOLEY: I can hand up my copy.

16 THE COURT: I don't want to take your copy. What  
17 color binder is it?

18 MR. DOOLEY: Black binder 3.

19 THE COURT: Is there an objection or not?

20 MR. REEVES: I thought there had been rulings.

21 THE COURT: Just tell me, is there an objection? If  
22 there is an objection, I'll deal with it. If there is no  
23 objection, I'll admit it.

24 MR. REEVES: I think I object. I think I object to  
25 the extent --

## SIDEBAR

1           **THE COURT:** You think you object. That's actually --

2           **MR. REEVES:** I'll prove on that.

3           **THE COURT:** -- okay, but it's not terribly helpful.

4           **MR. REEVES:** I object.

5           **THE COURT:** Okay. Now I will look at it.

6           **MR. REEVES:** I ask to approach, please.

7           **THE COURT:** Let me look at it first. 82 -- sorry.

8           Which one is it?

9           **MR. DOOLEY:** 8237. And while you're at it, I intend  
10          to do 8236, so we can take them --

11          **THE COURT:** We can do them both.

12          Ladies and gentlemen, may I suggest you have a little  
13          conversation while I work my way through all of this.

14          (The following proceedings were heard at the sidebar:)

15          **THE COURT:** What's your objection?

16          **MR. REEVES:** I meant it when I said "I think I object"  
17          because this is the --

18          **THE COURT:** Wait a minute. Let's stop. I assume  
19          everybody means everything. All right. Sometimes even I mean  
20          what I say.

21          So just tell me what is your objection?

22          **MR. REEVES:** This is the announcement of the amount of  
23          impairment and I thought that was an area that we were going  
24          to --

25          **THE COURT:** I thought there was an agreement not to do



## SIDEBAR

1 it.

2 **MR. DOOLEY:** Well, I mean, it's two things. One is it  
3 goes directly to impeaching the restatement. I mean, our point  
4 is --

5 **THE COURT:** Well, my question to you is you want the  
6 amount of the impairment in?

7 **MR. DOOLEY:** Yes.

8 **THE COURT:** So they withdraw their objection. It  
9 comes in.

10 **MR. REEVES:** Okay.

11 **THE COURT:** As to both.

12 **MR. REEVES:** What is the second one?

13 **THE COURT:** 8236.

14 **MR. REEVES:** I don't have that.

15 **MR. KEKER:** The one before.

16 **MR. REEVES:** Very good. Thank you.

17 **MR. KEKER:** It's before 8237.

18 **MR. REEVES:** No objection, Your Honor.

19 **THE COURT:** Okay. 8236, 8237 are admitted.

20 **MR. DOOLEY:** Your Honor, while we are here --

21 **THE COURT:** While we are here, enjoying each other's  
22 company.

23 **MR. DOOLEY:** I appreciate the Court's desire to move  
24 quickly through the general questions about meetings with  
25 lawyers and meetings with the Government. However, I do intend

## SIDEBAR

1 to question this witness about specific meetings with lawyers  
2 related to the restatement.

3 **THE COURT:** Of course you can do that. Of course you  
4 can do that.

5 **MR. DOOLEY:** I just wanted to --

6 **THE COURT:** Of course you can do that, depending on  
7 what it is and the questions and so forth, but, you know, there  
8 isn't a witness who hasn't gotten up and met multiple times  
9 with the Government, the FBI and everybody else.

10 **MR. DOOLEY:** Understood, Your Honor. I just wanted  
11 to --

12 **THE COURT:** While we are here, so you can be guided in  
13 the cross, there is -- you have submitted a -- on other  
14 evidence you've submitted a brief which says, for example, on  
15 the Ernst & Young -- the Ernst & Young, Ernst & Whinney --

16 **MR. KEKER:** Ernst & Young.

17 **MR. DOOLEY:** Right.

18 **THE COURT:** -- work you said you could either do it  
19 through cross-examination of this witness or another witness.  
20 Okay. I don't know whether I'm going to admit it so I don't  
21 want you to ask this witness about it.

22 **MR. DOOLEY:** I wasn't planning to do it, before lunch  
23 anyway. I was planning to get to it, but not --

24 **MR. REEVES:** How far open is the door now --

25 **THE COURT:** I don't know how far open the door is.

1 It's open 18 inches.

2 (Sidebar conference ended and proceedings held in open court)

3 **MR. REEVES:** Your Honor, I withdraw our objection to  
4 8236 and 8237.

5 **THE COURT:** Okay. They are admitted. 8236, 8237  
6 admitted.

7 Go ahead. Mr. Dooley.

8 (Trial Exhibits 8236 and 8237 received in evidence)

9 (Exhibit published to jury.)

10 **BY MR. DOOLEY:**

11 **Q.** With all of that, Mr. Yelland, directing your attention to  
12 8237, do you recognize this as an HP press release dated  
13 November 20th, 2012?

14 **A.** Yes.

15 **Q.** And did you see this at the time, this press release?

16 **A.** I can't remember whether -- I must have. I just can't  
17 recall. I must have.

18 **Q.** And do you see at the bottom, the bottom bullet point  
19 reads, "Fourth quarter and full year fiscal 2012 results  
20 include a noncash, goodwill and intangible asset impairment  
21 charge of 8.8 billion dollars relating to the Autonomy  
22 business."

23 Do you see that?

24 **A.** Yes.

25 **Q.** That was announced on November 20th; correct?

1 A. Yes.

2 Q. And then in Exhibit 8236, is a -- do you recognize this as  
3 a second press release on November 20th, 2012?

4 A. Yes.

5 Q. Regarding Autonomy?

6 A. Yes.

7 Q. And it contains a statement that's being issued by HP,  
8 which reads in the second paragraph, "HP's extremely  
9 disappointed to find that some former members of Autonomy's  
10 management team used accounting improprieties,  
11 misrepresentation, and disclosure failures to inflate the  
12 underlying" -- and it goes on and on. Do you see that?

13 A. Yes.

14 Q. That was HP's public statement on November 20th, 2012;  
15 right?

16 A. Yes.

17 Q. And then down below, it talks about initiating an intense  
18 internal investigation, including a forensic review by Price  
19 Waterhouse Coopers; correct?

20 A. Yes.

21 Q. After this -- so we established, before we talked about  
22 these exhibits and before the sidebar, that in the fall of  
23 2012, prior to November 20th, you were working with Lee Welham  
24 and others at Deloitte on preparing the ASL accounts; correct?

25 A. Yes.

1 Q. And we looked at the agenda from October 3rd that didn't  
2 have any reference to hardware or these resellers or reciprocal  
3 transactions or any restatement; correct?

4 A. Correct. At that point, we hadn't brought to Deloitte the  
5 concerns across the wider Autonomy business. We were only  
6 discussing with Deloitte generally the deals where Autonomy  
7 Systems Limited was contracting directly with the end user.

8 And so what you see in the agenda there is some of the  
9 examples that relate specifically to those deals, but as I  
10 said, we hadn't opened up with Deloitte as to the extent of the  
11 other issues we were finding. So you don't see the other  
12 issues on their agenda.

13 Q. And yesterday you testified that after this -- the  
14 announcement on November 20th, you invited Deloitte to resign.  
15 Do you remember that testimony?

16 A. Yes.

17 Q. And what that means is that you terminated them; correct?  
18 And by "you," I mean HP terminated Deloitte?

19 A. Yeah. I think from a technical point of view, we didn't  
20 terminate them, but in a sense -- essentially we invited them  
21 to resign and they resigned, so it has a -- in practice, a  
22 similar outcome that they were no longer the auditors.

23 Q. Okay. Look at Exhibit 6902, if you can.

24 A. Sorry. I didn't catch the number.

25 Q. 6902 in Volume 2.

1           **THE COURT:** Any objection?

2           **MR. REEVES:** I don't think so.

3           **THE COURT:** Nope. That's actually not good enough.

4           **MR. REEVES:** No, Your Honor. I'm just looking for it.

5           **THE COURT:** Just say "one moment, please," and look at  
6 it.

7           **MR. REEVES:** 6902?

8           **THE COURT:** Right.

9           **MR. REEVES:** No, Your Honor. There is no objection.

10          **THE COURT:** Okay. Admitted.

11          (Trial Exhibit 6902 received in evidence)

12                   (Exhibit published to jury.)

13   **BY MR. DOOLEY:**

14   **Q.** Mr. Yelland, do you recognize Exhibit 6902 as an email you  
15 sent to Betsy Branch, Marc Levine and others?

16   **A.** Yes.

17   **Q.** If you could flip over to the second page, at the top  
18 there is an email from Betsy Branch to you and Michael Flint.

19           Who is Betsy Branch?

20   **A.** Betsy Branch at the time was the head of enterprise  
21 financial reporting, so it was HP's external reporting  
22 function.

23   **Q.** And she writes on November 20th -- and that's the same day  
24 as the press releases we saw; right, Mr. Yelland?

25   **A.** Yes.

1 Q. She writes, "The decision has been made by Cathie Lesjak,  
2 John Schultz and Marc Levine to dismiss Deloitte as Autonomy  
3 auditor immediately, including for the fiscal year '11  
4 statutory audits."

5 Do you see that?

6 A. Yes.

7 Q. And Cathie Lesjak is the CFO of HP; correct?

8 A. Correct.

9 Q. John Schultz at that time was the general counsel;  
10 correct?

11 A. Yes.

12 Q. Who was Marc Levine?

13 A. Marc Levine was the controller.

14 Q. When you dismissed Deloitte as the auditors, you replaced  
15 them with HP's auditors at Ernst & Young; correct?

16 A. Yes.

17 Q. And after HP terminated Deloitte in November of 2012, you  
18 worked for another 14 months on the ASL accounts before the  
19 restatement was filed in January 2014?

20 A. Yes.

21 Q. And you worked very closely with Morgan Lewis and with PWC  
22 in preparing the restatement, didn't you?

23 A. I didn't work closely with Morgan Lewis in preparing the  
24 financial statement.

25 Q. Okay.

1   **A.**   The work with PWC -- you know, they were investigating on  
2   behalf of the legal teams, and I was doing the investigation  
3   for the stats. We were often, but not always, investigating  
4   the same matters.

5           So -- and in their investigation also they needed the  
6   cooperation of the Autonomy finance team so, yes, we did a lot  
7   of work with PWC.

8   **Q.**   Let's look at Exhibit 6935. That's in Volume --

9           **THE COURT:** Sorry.

10          **MR. DOOLEY:** -- Volume 2.

11          **THE COURT:** One moment, please.

12          **MR. REEVES:** No objection, Your Honor.

13          **THE COURT:** 6935, no objection. Admitted.

14               (Trial Exhibit 6935 received in evidence)

15                       (Exhibit published to jury.)

16   **BY MR. DOOLEY:**

17   **Q.**   Mr. Yelland, this is an email from Nigel Curl at PWC to  
18   you, copy to a number of other folks. Do you see that?

19   **A.**   Yes.

20   **Q.**   And if you look on the second page, there is an email that  
21   you're sending out to folks from PWC and Ernst & Young. Do you  
22   see that?

23   **A.**   Yes.

24   **Q.**   And "Project Baron, privileged and confidential." You  
25   write in the second paragraph, "I suggest that PWC and Autonomy



1 meet in the morning to discuss the next steps on the  
2 investigation."

3 Do you see that?

4 **A.** Yes.

5 **Q.** And then on the first page, Mr. Curl responds, setting out  
6 an agenda. Do you see that?

7 **A.** Yes.

8 **Q.** And on the agenda are accounting audit issues, 2011  
9 accounts; right?

10 **A.** Yes.

11 **Q.** And along with an SEC subpoena. Do you see that?

12 **A.** Yes.

13 **Q.** Let's look at Exhibit 6937. And just so -- remind the  
14 jury. PWC was -- we saw it in the press release. They were  
15 hired to do the internal investigation for HP; right?

16 **A.** For the HP legal team, yes.

17 **Q.** Right.

18 **A.** It says in the press release that it's John Schultz.

19 **Q.** Let's look at Exhibit 6937. It's another email. This one  
20 is in April 2013.

21 I would move it in if there is no objection.

22 **MR. REEVES:** No objection.

23 **THE COURT:** Admitted.

24 (Trial Exhibit 6937 received in evidence)

25 (Exhibit published to jury.)

1 **BY MR. DOOLEY:**

2 **Q.** And the subject of this email is HP Autonomy statutory  
3 restatement. Do you see that?

4 **A.** Yes.

5 **Q.** And the top email is from Robert Particelli to Leslie  
6 Caldwell, Martha Stolley, and then folks from PWC are copied,  
7 as are you. Do you see that?

8 **A.** Yes.

9 **Q.** This email reflects that arrangements are being made for a  
10 conference call with Morgan Lewis lawyers and PWC where the  
11 subject is the statutory restatement; correct?

12 **A.** Yes.

13 **Q.** Let's look at Exhibit 6938.

14 Move it in.

15 **MR. REEVES:** No objection, Your Honor.

16 **THE COURT:** Admitted.

17 (Trial Exhibit 6938 received in evidence)

18 (Exhibit published to jury.)

19 **BY MR. DOOLEY:**

20 **Q.** And this is an email from Ms. Anderson, who you testified  
21 about, worked with you, to Mr. Curl at PWC, copied to Susan  
22 Resley at Morgan Lewis and yourself, with the subject  
23 "FileTek." Do you see all that?

24 **A.** Yes.

25 **Q.** And Ms. Anderson is asking PWC for information about a

1 FileTek transaction; correct?

2 A. Yes. It's one of the ones we discussed earlier.

3 Q. Okay. So fair to say that the team at PWC was providing  
4 you with information from their investigation?

5 A. Yes.

6 Q. And you're including HP's lawyers at Morgan Lewis in the  
7 discussion?

8 MR. REEVES: Objection. That misstates the evidence  
9 about Morgan Lewis.

10 THE COURT: I'm sorry. The question is you,  
11 Mr. Yelland, are including Morgan Lewis?

12 BY MR. DOOLEY:

13 Q. I'm sorry. Ms. Anderson is including Morgan Lewis in this  
14 email.

15 A. Yes.

16 THE COURT: Overruled. Go ahead.

17 BY MR. DOOLEY:

18 Q. Let's look at Exhibit 6940.

19 MR. REEVES: No objection.

20 THE COURT: Admitted.

21 (Trial Exhibit 6940 received in evidence)

22 (Exhibit published to jury.)

23 BY MR. DOOLEY:

24 Q. Is this a calendar invitation, Mr. Yelland, for a meeting  
25 called "Autonomy, PWC, Morgan Lewis, and EY Catch-Up"?

1 A. Yes.

2 Q. And the agenda is to review transactions -- discuss  
3 transactions that were reviewed by PWC?

4 A. Yes. EY, as the auditors of Autonomy Systems Limited,  
5 have the right to understand any investigations that the --  
6 that are being conducted into the company, particularly if they  
7 relate to accounting misstatements or fraud.

8 Q. Let's look at another one, 6943. Actually we can skip  
9 that one. Let's do 6947.

10 THE COURT: These are interview memos?

11 MR. DOOLEY: "Subject: Interview memos."

12 THE WITNESS: Yes.

13 THE COURT: Wait. Wait. I need to see whether there  
14 is an objection.

15 MR. REEVES: Is the interview memo attached?

16 MR. DOOLEY: No. I'm just introducing the email.

17 MR. REEVES: The one-page document?

18 THE COURT: I'm sorry.

19 MR. REEVES: I have no objection to 6947.0001, the  
20 email.

21 THE COURT: 6947.0001 admitted.

22 (Trial Exhibit 6947.0001 received in evidence)

23 (Exhibit published to jury.)

24 BY MR. DOOLEY:

25 Q. Mr. Yelland, this is an email from Mr. Bellacosa at Morgan

1 Lewis, sending a link to download interview memos; correct?

2 **A.** Yes. I wanted to ensure that the conclusions we'd reached  
3 in the stats were not contradicted by further investigations  
4 that the Autonomy legal -- sorry -- the HP legal team had  
5 conducted. So I asked for access to some of their  
6 investigation material.

7 **Q.** Take a look at Exhibit 6903. Tell me if you've seen this  
8 document before.

9 **A.** (Witness reviews document.)

10 Yeah. This is E --

11 **THE COURT:** Wait. I'm waiting to see whether the  
12 Government has an objection.

13 **MR. REEVES:** I was waiting to see if it was being  
14 offered.

15 **MR. DOOLEY:** The question is has he seen it before?

16 **THE COURT:** Okay. I would anticipate -- if he said  
17 yes, you would want to introduce it. Am I a wrong?

18 **MR. REEVES:** We do not have an objection to Exhibit  
19 6903.

20 **THE COURT:** You are saying you have no objection; is  
21 that right?

22 **MR. REEVES:** Yes, Your Honor.

23 **THE COURT:** Okay. 6903 admitted.

24 (Trial Exhibit 6903 received in evidence)

25 (Exhibit published to jury.)

1 BY MR. DOOLEY:

2 Q. If you look at -- have you seen this before, Mr. Yelland?

3 A. Yes.

4 Q. If you look at page 7 of the exhibit, it describes at the  
5 top, "Access now given to Chris Y and EY." Is that "Chris  
6 Y" -- is that you?

7 A. Sorry. Which -- top of which -- oh, page 7, yeah.

8 Q. Page 7 of the exhibit.

9 A. When you say "Chris Y" is that me? Yes.

10 Q. Yes. That's the question.

11 And I should begin by asking, this is an Ernst & Young  
12 document, and on the front page, it references the UK statutory  
13 audit 2011; right?

14 A. Yes.

15 Q. So this is a document about the process of preparing the  
16 statutory accounts; correct?

17 A. Yeah. This is EY --

18 Q. That's my only question. Is it a document that references  
19 the preparation of the statutory accounts?

20 A. Yes, it is.

21 Q. Okay. And if you look at page 7, it reads, "Breakthrough  
22 on investigation review as access now given to Chris Y and EY  
23 to review the revenue investigation, as well as perform a  
24 review of other financial-related matters." And it says  
25 "information received to date."

1 And this is information that you were provided while you  
2 were preparing your -- preparing the restatement; correct?

3 A. It was information provided --

4 Q. To you. To Chris Y.

5 A. Yeah. Just let me check through the individual...

6 (Witness reviews document.)

7 Yes.

8 Q. And that included reports prepared for presentation  
9 purposes to the SEC and DOJ?

10 A. Yes.

11 Q. The PWC report with supporting exhibits and appendices, do  
12 you see that?

13 A. Yes.

14 Q. And then two calls with Morgan Lewis to gain a high-level  
15 understanding of the investigation process. Do you see that?

16 A. Yes.

17 Q. And that's all information that you were provided in  
18 connection with preparing the restatement; right?

19 A. Well, in particular, EY were provided because, as I said,  
20 as the auditors, they have a right to --

21 Q. Mr. Yelland, that is not my question. I'm sorry to  
22 interrupt --

23 MR. REEVES: I object.

24 MR. DOOLEY: The question was it's information that  
25 he's provided.

1           **MR. REEVES:** Let him finish his answer. We object.

2           **THE COURT:** You may respond. Go ahead.

3           **THE WITNESS:** So it's information that I and EY were  
4 provided. EY had a right to access this information.

5           It took quite a bit of discussions with HP as to the  
6 rights of a UK auditor because HP's a U.S. business, and in the  
7 U.S., individual entities don't file statutory accounts.

8           And so there were quite a few conversations with EY as to  
9 what their rights as the auditors were and, you know, what  
10 information could reasonably be shared with EY around the  
11 investigations.

12       **BY MR. DOOLEY:**

13       **Q.** Okay. But my question, Mr. Yelland, is this is  
14 information that was provided to you in connection with  
15 preparing the restatement; isn't that right?

16       **A.** So part of the information was provided to me with regard  
17 to me preparing the restatement, but some of the information in  
18 here wasn't important to me in terms of preparing the  
19 restatement but it was important to EY for the purposes of  
20 their audit.

21       **Q.** Fair enough.

22           Your Honor, this would be a good --

23           **THE COURT:** I would like to go a few more minutes, if  
24 I might. I would like to resume at 1:15 today so the Court can  
25 do some business. If you could proceed for another five



1 minutes, ten minutes --

2 **MR. DOOLEY:** Absolutely, Your Honor.

3 **THE COURT:** Thank you.

4 **BY MR. DOOLEY:**

5 **Q.** You filed the ASL restatement on January 31st, 2014;  
6 right?

7 **A.** I signed it then, yes. And then shortly after, it's  
8 filed.

9 **Q.** Okay. Before filing the restatement, do you recall  
10 getting edits to the restatement from PWC?

11 **A.** You say "edit to the restatement." What do you mean?

12 **Q.** I mean proposed line edits to the language of the  
13 restatement.

14 **A.** Do you mean line edits to the language in the account?

15 **Q.** I do. And why don't we just look at Exhibit 6952.  
16 I would offer it into evidence.

17 **THE COURT:** Pardon me?

18 **MR. DOOLEY:** I offer it in.

19 **MR. REEVES:** No objection to 6952.

20 **THE COURT:** Admitted.

21 (Trial Exhibit 6952 received in evidence)

22 (Exhibit published to jury.)

23 **BY MR. DOOLEY:**

24 **Q.** Mr. Yelland, do you see that Exhibit 6952 is an email you  
25 forwarded to Ms. Anderson, forwarding an email -- you're

1 forwarding an email from John Tracey at PWC. Do you see that?

2 A. Yes.

3 Q. And the subject is "Comments on draft statutory accounts  
4 for ACL and ASL"; correct?

5 A. Yes.

6 Q. And, first of all, who is John Tracey? Is he a partner at  
7 PWC?

8 A. Yes.

9 Q. And who is the "Jonathan" that is addressed here at  
10 Proskauer. Is that another HP lawyer?

11 A. So, yes, he was with Proskauer.

12 Q. And Mr. Tracey -- and this is on January 30th, 2014, so a  
13 day before the restatement is filed; correct? Or you signed  
14 it?

15 A. Yes.

16 Q. And you're copied on this email?

17 A. Yes.

18 Q. And Mr. Tracey writes, "Dear Jonathan, further to our call  
19 earlier this evening, here are our comments on the draft  
20 statutory accounts. Comments that may have relevance to the  
21 future litigation are highlighted below."

22 Do you see that?

23 A. Yes.

24 Q. And then he summarizes "some of the more important issues  
25 that we noted are." Do you see that?

1 A. Yes.

2 Q. And he notes the absence of any disclosure regarding  
3 hardware; right?

4 A. Correct. Autonomy Systems Limited didn't itself, as a  
5 company, sell material amounts of hardware.

6 Q. I'm just asking about what is in the email. But -- okay.

7 He also notes that "the wording of the EY audit opinion  
8 and the possible need to strengthen the wording regarding  
9 management's investigation."

10 So he wants stronger language about management's  
11 investigation; is that what it appears?

12 A. Yes.

13 Q. And then one of the important issues is the reference to  
14 errors rather than misstatements. Do you see that?

15 A. Yes. Because the accounting definition of "errors" and  
16 "misstatements" is different to the legal definition of  
17 "errors" and "misstatements" and so there was a lot of  
18 discussion --

19 Q. Mr. Yelland, again --

20 THE COURT: Let him answer.

21 THE WITNESS: So in accounting terms, the word "error"  
22 can include both a -- an honest mistake and fraud. But in  
23 legal terms, as I understood it, the word "error" has a  
24 somewhat different connotation in that you would normally  
25 describe something as an error or a misstatement or a fraud.

1 So there was -- there was quite a few conversations about  
2 well, what language should we use as accountants and -- and  
3 whether legally they had different meanings than the accounting  
4 meanings.

5 So, you know, this is the type of discussion we're having  
6 in here.

7 **BY MR. DOOLEY:**

8 **Q.** All right. Well, let's -- so in his email, his cover  
9 email, Mr. Tracey says, "Here are our comments. Comments that  
10 may have relevance to the future litigation are highlighted in  
11 yellow."

12 And so let's go look at the attachment. If we could look  
13 at Exhibit 69 -- excuse me. 6952-B. If we could look at that  
14 in the native format.

15 Can we do that, Jeff? Is that 6952-B? That looks like A.  
16 Great. If we could scroll down and hopefully we'll see the  
17 comments. Jeff, can you enable it so we can see the line edit  
18 comments.

19 Apologies, Your Honor. If I might have one moment.

20 **THE COURT:** Well, so maybe now is a good time to take  
21 a break.

22 **MR. DOOLEY:** It is. I apologize for the technology --

23 **THE COURT:** Ladies and gentlemen, we will be in recess  
24 until 1:15. Remember the admonition given to you: Don't  
25 discuss the case, allow anyone to discuss it with you, form or

1 express any opinion.

2 (Luncheon recess was taken at 12:05 p.m.)

3 **Afternoon Session**

**1:14 p.m.**

4 (Proceedings were heard out of the presence of the jury:)

5 **THE COURT:** Okay. Let the record reflect that the  
6 jurors are absent but the parties are present.

7 And my understanding is that the counsel for Hewlett  
8 Packard has a request or wants to make a statement.

9 Go ahead.

10 **MS. RESLEY:** Yes, Your Honor. Susan Resley and Mike  
11 Wong on behalf of HP.

12 We wanted to raise two documents that were admitted into  
13 evidence, which were privileged, and we believe may have been  
14 inadvertently produced maybe in the U.K. action with the  
15 millions and millions and millions of documents; and those are  
16 what were Exhibit Numbers 6937, and that is an April 22nd,  
17 2013, e-mail from Robert Particelli of HP to a number of people  
18 from both Morgan Lewis and PWC and Mr. Yelland --

19 **THE COURT:** Let me just get it.

20 **MS. RESLEY:** Sure.

21 **THE COURT:** 6937?

22 **MS. RESLEY:** Correct.

23 (Pause in proceedings.)

24 **THE COURT:** Are we looking at the same one? This says  
25 "Need to be early. I need to be there by 1:30."

1           **MS. RESLEY:** That one we're probably less concerned  
2 with. The one that we'd really prefer to discuss is 6952,  
3 which was the last document put into evidence.

4           **THE COURT:** Okay. Let me look at that.

5           Okay. I mean, look, 6937 can -- I'll hear from the  
6 parties why it should come in.

7           **MS. RESLEY:** We're actually -- Your Honor, we're fine  
8 with that one.

9           **THE COURT:** Okay.

10          **MS. RESLEY:** The main one --

11          **THE COURT:** It doesn't constitute a waiver.

12          Okay. So --

13          **MS. RESLEY:** Yes. And the main thing that we're  
14 concerned with is 6952.

15          **THE COURT:** Okay. Let me look at it.

16          **MS. RESLEY:** Please.

17                       (Pause in proceedings.)

18          **THE COURT:** Okay. This goes -- I'm a little -- okay.  
19 The top goes from Mr. Yelland to Andrea -- I mean Antonia  
20 Anderson, but the body --

21          **MS. RESLEY:** Yes.

22          **THE COURT:** -- is a document from John Tracey at  
23 PricewaterhouseCoopers to J.E. Richman at Proskauer, Proskauer  
24 being an attorney.

25          **MS. RESLEY:** That's a law firm and they were one of

1 HP's outside counsel.

2 **MR. DOOLEY:** Doing what in this case?

3 **THE COURT:** So the content of the letter is -- the  
4 content of the memo are all of these terms which we've had some  
5 discussion about.

6 **MS. RESLEY:** Well, and the point is that Mr. Tracey at  
7 PWC is sending Mr. Richmond an e-mail saying that he is sending  
8 comments. Comments that may have relevance to the future  
9 litigation are highlighted in yellow, and so that is clearly  
10 privilege conversation.

11 What Mr. Yelland is doing is conveying that information to  
12 Ms. Anderson, so he is conveying -- he is an HP employee  
13 conveying to another.

14 **THE COURT:** So HP's counsel was Proskauer?

15 **MS. RESLEY:** Yes. They were representing the Demand  
16 Review Committee of HP.

17 **THE COURT:** Why isn't it privilege?

18 **MR. DOOLEY:** And why is the Demand Review Committee  
19 commenting on a restatement?

20 **THE COURT:** I don't know who's doing what. Just tell  
21 me why --

22 **MS. RESLEY:** And in --

23 **THE COURT:** Wait. Wait. Enough. Excuse me. I've  
24 got a jury and I've got to move.

25 **MS. RESLEY:** Yes.

1           **THE COURT:** So it looks to me like it's a privilege  
2 document --

3           **MS. RESLEY:** Yes.

4           **THE COURT:** -- at least insofar as the comments are  
5 concerned.

6           Now, if you have a different view, why, that's what I want  
7 to hear.

8           **MR. DOOLEY:** Well, Your Honor, it's difficult to  
9 understand the exact context in which the comments are provided  
10 because I don't understand why --

11           **THE COURT:** It says, "These may be relevant to  
12 litigation." They're in anticipation of litigation.

13           **MS. RESLEY:** Absolutely, and there's in-house and  
14 outside counsel in addition to Jon Richman.

15           **THE COURT:** It looks to me like it's privileged. Is  
16 there some argument that it's not privileged?

17           **MR. KEKER:** Yes, there is an argument.

18           **THE COURT:** Go ahead, Mr. Keker.

19           **MR. KEKER:** This witness -- this is from the people  
20 doing the restatement to each other --

21           **THE COURT:** Yeah.

22           **MR. KEKER:** -- and they are providing information.  
23 Part of our whole point is what they're doing is being pumped  
24 and primed by the people who are doing the litigation, and it  
25 is not privileged. They are not --



1           **THE COURT:** Wait. Is there a crime fraud exception or  
2 something?

3           **MR. KEKER:** They are -- no, no. They are not  
4 communicating for the purposes of seeking legal advice or  
5 anything else.

6           **THE COURT:** This communication was intended to  
7 address -- was legal advice. I'm not saying -- I'm not saying  
8 nothing comes in on these subjects and so forth. As a matter  
9 of fact, what I thought I would do is simply strike the yellow  
10 comments, any testimony relating to the yellow comments, and  
11 leave the body of the document in because that --

12           **MR. KEKER:** Okay. That's one way to do it, but we  
13 object even to that because this is -- once there's an  
14 attorney-client privilege communication and I send it to  
15 somebody for purposes that have nothing to do with  
16 attorney-client privilege, I send it to -- we're supposed to be  
17 doing a good and honest restatement and I send it to you,  
18 that's a waiver. I mean, there is --

19           **THE COURT:** That's not a waiver --

20           **MS. RESLEY:** Not within HP.

21           **THE COURT:** -- not if you send it to a person --  
22 number one -- actually, I sort of get to go first even if  
23 you're talking.

24           Number one, normally I don't disagree with you depending  
25 on how broad it was. In this case it appears that the

1 communication was essentially given to the client about what  
2 the lawyer thought was anticipating the litigation. So it's  
3 not okay -- I don't think a broadcast, quote, whatever that  
4 means, within the client is a waiver of the communication.

5 So, anyway, what I'm going to do is strike the yellow  
6 portion and admonish the jury to disregard any testimony  
7 related to the yellow comments. Okay?

8 **MS. RESLEY:** Thank you, Your Honor.

9 **THE COURT:** And I don't need to say why I'm doing it,  
10 but that's what I'm going to do.

11 Okay. Thank you.

12 **MR. WONG:** Thank you.

13 **THE COURT:** Bring in the jury.

14 (Proceedings were heard in the presence of the jury:)

15 **THE COURT:** Please be seated.

16 Okay. Let the record reflect all jurors are present, the  
17 parties are present.

18 Ladies and gentlemen, there was a document that was  
19 admitted into evidence. It's Exhibit Number 6952. I don't  
20 know whether you kept track, but it was a memorandum that  
21 Mr. Yelland forwarded to Ms. Anderson and attached to it was  
22 the memo from Mr. Tracey to somebody at the Proskauer law firm.

23 I don't have to go through all the details, but just to  
24 tell you there were two parts to the memorandum if you saw it  
25 on the screen. One was the typed regular part of the

1 memorandum, and then to the side were comments and they were  
2 highlighted in yellow. Okay. I am striking that from the  
3 exhibit. It's not for your consideration. As to any testimony  
4 about those comments, I am striking them from the record and  
5 admonishing you to disregard them.

6 Okay. And we're leaving it at that.

7 Mr. Dooley, you may continue.

8 **MR. DOOLEY:** Thank you, Your Honor.

9 **Q.** Mr. Yelland, after the restatement was filed in January of  
10 2014, you went on to work on Hewlett Packard's civil litigation  
11 against Mr. Hussain and others in London; correct?

12 **A.** I provided -- I and my team provided support to their  
13 investigation when -- as and when requested.

14 **Q.** And one of the things that you did was after the ASL  
15 statements were filed, you performed an additional analysis  
16 called the second rebasing exercise; is that right?

17 **A.** Yeah. It was begun before the accounts were filed but it  
18 continued on through it.

19 **Q.** And the purpose of that was to apply the same analysis  
20 against quarterly consolidated results?

21 **A.** Yes, similar to the analysis we saw earlier.

22 **Q.** Okay. And that analysis was used -- the second rebasing  
23 exercise that you performed, the quarterly results analysis,  
24 that was used to draft the schedules to the complaint filed in  
25 England; right?

1 **A.** Yes. I understand that's what the legal team used it for.

2 **Q.** Okay. And so the jury understands, in the civil case in  
3 England there's a legal complaint and attached to it are  
4 various schedules setting out Hewlett Packard's view of the  
5 correct or incorrect accounting; correct?

6 **MR. REEVES:** Objection. Relevance, Your Honor.

7 **THE COURT:** Sustained.

8 **MR. DOOLEY:** Your Honor, I'm trying to get -- I would  
9 like the witness to explain the testimony that he gave a moment  
10 ago so the jury can understand what the schedules and the  
11 particulars are.

12 **THE COURT:** Okay. It's sustained because I think it  
13 then goes into a whole nother subject matter of what are the  
14 schedules, what is the civil litigation.

15 I don't object -- they have not objected and I wouldn't  
16 sustain an objection to your pointing out, as you just did,  
17 that he offered support for the civil litigation, but it stops  
18 there. It just shows you what he did as distinct from what it  
19 was all about.

20 **MR. DOOLEY:** Got it. Okay.

21 **Q.** And you've also testified earlier that you've met with the  
22 lawyers from Travers Smith and Choate Hall who are working on  
23 the civil case in England; correct?

24 **A.** Yes.

25 **Q.** The Autonomy Systems Limited's accounts, their financial

1 accounts, were prepared under a different accounting standard  
2 from Autonomy Corporation Limited; correct?

3 A. Correct.

4 Q. Autonomy Systems Limited, the entity for which the  
5 restatement was prepared, their accounts are prepared under  
6 U.K. GAAP; correct?

7 A. Yes.

8 Q. Autonomy Corporation Limited, the group level, their  
9 accounts were prepared under IFRS; correct?

10 A. Yes.

11 Q. And the jury has heard about a number of rules in this  
12 case. Are you familiar with what's called IAS 18?

13 A. Yes.

14 Q. And IAS 18 is an IFRS rule for revenue recognition;  
15 correct?

16 A. Yes.

17 Q. And the jury has heard about IFRS 8. Are you familiar  
18 with IFRS 8?

19 A. Less so but to an extent.

20 Q. And that's an IFRS rule that relates to segmental  
21 reporting; correct?

22 A. Yes.

23 Q. And IAS 18 and IFRS 8, those are IFRS rules not U.K. GAAP  
24 rules; correct?

25 A. Yes.

1 Q. And the U.S. restatement was also done under U.K. GAAP  
2 rules; correct?

3 A. Yes.

4 Q. Looking at Exhibit 2445, which is in evidence, which is  
5 the restatement --

6 THE COURT: It will be on the -- Mr. Yelland, it will  
7 be on the screen. You'll see it in a minute.

8 BY MR. DOOLEY:

9 Q. Ernst & Young began working on the restatement in  
10 approximately November of 2012; correct?

11 A. They really -- they started doing their planning, yes, but  
12 they really started work in January.

13 Q. Okay. And the restatement was filed in January 2014?

14 A. Yes.

15 Q. So Ernst & Young spent 14 months working on it, more than  
16 a year working on the restatement?

17 A. More than a year, yes, I would say.

18 Q. Do you know how much Ernst & Young was paid for that work?

19 A. I can't recall. I think it is in the financial  
20 statements.

21 Q. Is it more than \$1 million?

22 A. I can't recall the value. It probably -- it probably was  
23 more than \$1 million. It will say in the financial statements.

24 Q. Okay. And after all of that work, Ernst & Young  
25 concluded -- and I'm looking at page 12 of Exhibit 245, the

1 disclaimer of opinion -- that (reading):

2 "Because of the significance of matters described in  
3 the basis for disclaimer of opinion, we have not been able  
4 to obtain sufficient appropriate audit evidence to provide  
5 a basis for an audit opinion."

6 That was their disclaimer of opinion; correct,

7 Mr. Yelland?

8 **A.** Yes.

9 **Q.** And Ernst & Young stated (reading):

10 "We do not express an opinion on the financial  
11 statements."

12 Correct?

13 **A.** Yes. And as I testified earlier, they gave reasons for  
14 that above.

15 **Q.** The restatement, Exhibit 2445, also adjusted -- or  
16 adjusted ASL's revenue for reasons that had nothing to do with  
17 any of the things that you've testified about here today -- the  
18 revenue acceleration, hardware sales, and so forth -- correct?

19 **A.** Could you clarify the question? I think I understand what  
20 you're asking, but I'm not 100 percent sure.

21 **Q.** Oh, sure. So to be specific, there were certain  
22 accounting policy changes that were applied retroactively in  
23 the restatement that had an effect on revenue; correct?

24 **A.** Yes.

25 **Q.** For example, retroactive application to a change in

1 accounting policy regarding R&D expenses?

2 A. Yes, they affected ASL's revenue, not the group revenue.

3 Q. And prior to HP's acquisition, the Autonomy group of  
4 companies resold EMC and Dell hardware at a loss; correct?

5 A. Yes, and Hitachi.

6 Q. And Hitachi.

7 And some of that hardware was sold in the U.K.; right?

8 A. Not a significant amount, no.

9 Q. But some of it was; right?

10 A. From memory, I think it was about \$300,000 or that order  
11 of magnitude, so that's why I say it's not significant to ASL's  
12 accounts.

13 Q. But most of the hardware sales were in the United States;  
14 right?

15 A. Yes.

16 Q. After HP's acquisition, the Autonomy business unit  
17 continued to resell Dell hardware at a loss; right?

18 A. Yes. The management at the time continued to do that.

19 Q. Okay. And in your role as CFO of the HP/Autonomy  
20 business, you approved the sale of Dell hardware at a loss?

21 A. No.

22 Q. You didn't? Did you approve the purchase of Dell hardware  
23 for resale?

24 A. I approved the payment against purchase orders that had  
25 already been sent by the previous management. I didn't approve



1 the purchasing.

2 Q. But you approved the payment for the hardware?

3 A. Yes. I -- it had to be paid because legally we were  
4 obliged to pay for what the previous management had bought.

5 Q. And HP ultimately made a business decision to stop  
6 reselling hardware at a loss. You testified about that  
7 earlier; right?

8 A. I believe that decision was already made by the former  
9 Autonomy management as I arrived.

10 Q. Do you recall, Mr. Yelland, that when you restated ASL's  
11 accounts, you concluded that it was proper to recognize revenue  
12 from hardware sales on a gross basis?

13 A. Yes. When we looked at the restatement tables earlier, we  
14 didn't restate for the recognition of the hardware revenue.  
15 The question is whether it should have been separately  
16 disclosed.

17 Q. And I want to take that one step at a time.

18 So recognizing revenue on a gross basis means that ASL  
19 properly recorded the full sale price as revenue even though  
20 the sales were made at a loss; correct?

21 A. The vast majority of the hardware sales were recorded in  
22 the U.S. by Autonomy, Inc., and not by ASL.

23 Q. But your conclusion that it was appropriate to recognize  
24 on a gross basis means you recognize the full sale price of the  
25 hardware even though it's being sold at a loss; correct?

1 A. Well, the Autonomy group did when it had group accounts  
2 and Autonomy, Inc., also did and that would also have impacted  
3 HP's accounts. It's not so relevant to ASL itself.

4 Q. Okay. I think you just testified to this a moment ago but  
5 I want to be clear. When you did the restatement, you did not  
6 remove any hardware revenue from ASL's 2010 or 2011 accounts to  
7 the extent it was there?

8 A. Correct. Although we've been talking about it, it wasn't  
9 in ASL. It was -- the vast majority of the hardware was in  
10 Autonomy.

11 Q. Right. My point is, the hardware that was there, you  
12 didn't remove it from ASL's accounts when you did the  
13 restatement; did you?

14 A. Correct.

15 Q. And, likewise, when you did the restatement, you concluded  
16 that ASL's existing practice of declaring that revenue is  
17 earned from one operating segment was reasonable; correct?

18 A. Well, for ASL that was reasonable because ASL did not make  
19 significant hardware sales.

20 Q. And the restatement does not separately disclose ASL's  
21 revenue from hardware sales, does it?

22 A. ASL's hardware sales were insignificant to the company, so  
23 they were not required to be disclosed as a separate segment  
24 because you only -- you only disclose separate segments if they  
25 are a material part of the business.

1 Q. I want to talk about the quarter-by-quarter chart that  
2 Mr. Reeves walked through with you earlier today.

3 Do you recall that the prosecutors here reached out to you  
4 back in December of 2015 while you were still working at HP  
5 about preparing this chart?

6 A. I don't recall the exact date, but they did reach out to  
7 me, yes.

8 Q. Okay. Why don't you see if you can just look at what's  
9 been marked as Exhibit 6923.

10 A. (Witness examines document.)

11 Q. It should be in Volume 2.

12 THE COURT: What is the date? He said he didn't  
13 recall the date. Do you have the date?

14 MR. DOOLEY: The date is on the e-mail.

15 THE COURT: Just tell me what it was.

16 MR. DOOLEY: December 3rd.

17 THE COURT: Okay. Does that sound right to you?  
18 December 3rd what?

19 MR. DOOLEY: 2015.

20 THE COURT: Does that sound about the date that the  
21 prosecutors reached out to you?

22 THE WITNESS: (Witness examines document.)

23 THE COURT: Mr. Yelland?

24 THE WITNESS: It sounds reasonable.

25 THE COURT: Okay. So let's move from there.

1           **MR. DOOLEY:** All right.

2           **Q.** And do you recall that the prosecutors sent you a version  
3 of a chart that Hewlett Packard's lawyers had prepared to look  
4 at?

5           **A.** Sorry. Could you repeat the question?

6           **Q.** I said do you recall that the prosecutors sent you a  
7 version of a chart that Hewlett Packard's lawyers at  
8 Morgan Lewis had prepared to look at as an example?

9           **A.** I don't -- yes. Yes, they did.

10          **Q.** Okay. Do you recall that the prosecutors suggested that  
11 another example you could look at would be the schedules to the  
12 particulars of claim in the civil case?

13          **A.** That I could look at? I don't specifically recall that.

14          **Q.** Okay. And then you had a number of meetings with the  
15 prosecutors in January and March of 2016 to talk about this  
16 chart. Do you recall that?

17          **A.** Yes.

18          **Q.** And at the same time you were meeting with the prosecutors  
19 about preparing this chart, you were also working with Hewlett  
20 Packard's hired consultants at PricewaterhouseCoopers; right?

21          **A.** I was working with PWC, yes.

22          **Q.** And once you had completed a draft of the chart, you gave  
23 it to HP's lawyers and they sent it on to the prosecutors;  
24 right?

25          **A.** Yes.

1 Q. And then you get further instructions back and you do some  
2 more work with PWC; right?

3 A. Further instructions back from?

4 Q. Further comments back on the chart. After you sent them  
5 the chart in the beginning of 2016, they came back with  
6 comments and asked you to do some more work?

7 A. Okay. We're still talking about the charts with the  
8 prosecutors?

9 Q. Yes.

10 A. Yes.

11 Q. And then you did a two-day meeting with the prosecutors in  
12 June of 2017 and you talked about the charts then; right?

13 A. Yes.

14 Q. And you made a bunch of changes based on what the  
15 prosecutors told you at that two-day meeting; right?

16 A. Yes.

17 Q. And then you sent it off to HP's lawyers at Morgan Lewis  
18 once you made the changes; right?

19 A. Yes.

20 Q. And at one point at least an HP lawyer edited your chart;  
21 right? Does that sound right?

22 A. A HP lawyer?

23 Q. A lawyer for HP at Morgan Lewis edited your chart.

24 MR. REEVES: I object, Your Honor. We've had  
25 testimony that Morgan Lewis represented Mr. Yelland at the

1 time. So objection. Mischaracterizes the evidence.

2 **THE COURT:** Well, I don't know. I'm going to sustain  
3 the objection subject to an offer of proof.

4 Okay.

5 **MR. DOOLEY:** Okay. Well, can we look at Exhibit 6953,  
6 which is --

7 **THE COURT:** Okay. 6953.

8 **MR. DOOLEY:** It's an Excel spreadsheet. It's a  
9 native.

10 **THE COURT:** Okay. Is there any objection?

11 **MR. REEVES:** I don't have it.

12 **MR. DOOLEY:** It's in native form.

13 **MR. REEVES:** I don't know whether I have an objection.  
14 I don't have it.

15 **THE COURT:** Pardon me?

16 **MR. REEVES:** I do not have the document.

17 **THE COURT:** Well, there we go. Could you please give  
18 him the document?

19 **MR. DOOLEY:** It's in native format, Your Honor, so it  
20 needs to be -- it's an Excel spreadsheet so it needs to be  
21 displayed on the screen. I can describe for counsel --

22 **THE COURT:** No, that's okay. So we can display it on  
23 the screen. The jury doesn't have to see it at this point but  
24 the parties do.

25 Okay. Can you do that, Lashanda?

1           **THE CLERK:** Yes. One moment.

2                           (Pause in proceedings.)

3           **THE CLERK:** Okay. Can you see it?

4           **THE COURT:** Okay. I take it the jury is not seeing  
5 it; right?

6           Okay. The Government is.

7           **MR. DOOLEY:** I'm not seeing it either, but --

8           **THE COURT:** Well, go look at Mr. Reeves' copy.

9                           (Pause in proceedings.)

10          **MR. REEVES:** I object, Your Honor. I don't object to  
11 questions about the creation of the charts but drafts of the  
12 charts I object to.

13          **MR. DOOLEY:** It's relevant, Your Honor, to show --

14          **THE COURT:** Okay, fine. On that basis objection,  
15 overruled. You may show it to the jury.

16          **THE CLERK:** Admitted?

17          **MR. DOOLEY:** Admitted.

18          **THE COURT:** That's 6953? Have I got the right number?

19          **MR. DOOLEY:** Yes, Your Honor.

20          **THE COURT:** Okay. Admitted.

21                   (Trial Exhibit 6953 received in evidence)

22   **BY MR. DOOLEY:**

23   **Q.** Mr. Yelland, does this look like a draft of the chart that  
24 we reviewed earlier today?

25   **A.** Yes.

1 Q. And if we can go up to the file, and do you see this is  
2 last modified on November 17th, 2017? Do you see that?

3 A. (Witness examines document.) Yes.

4 Q. Okay. And the author is you?

5 A. Yes.

6 Q. And the last modified is someone named Lauren Nicola  
7 Wenner. Do you see that?

8 A. Yes.

9 Q. All right. Do you know who that is?

10 A. No.

11 Q. Do you know if that's a lawyer for HP?

12 A. No.

13 Q. That's all. You can put it down.

14 Mr. Yelland --

15 MR. REEVES: Your Honor --

16 THE COURT: Yes, Mr. Reeves.

17 MR. REEVES: -- I believe if the draft is in evidence,  
18 it would --

19 THE COURT: It is.

20 MR. REEVES: -- seem that the summary should come in  
21 evidence, too. I don't know if you want to --

22 THE COURT: That sounds right. Any objection?

23 MR. DOOLEY: I do have an objection, Your Honor.

24 THE COURT: Well, how can we have the draft in  
25 evidence and not the summary?



1           **MR. KEKER:** We'll withdraw it.

2           **MR. DOOLEY:** Fine. We'll withdraw -- we'll withdraw  
3 the draft.

4           **THE COURT:** Oh, no, no, no. I'm not going -- I'll  
5 deal with this outside the presence of the jury.

6           **MR. REEVES:** Thank you, Your Honor.

7           **THE COURT:** Okay.

8 **BY MR. DOOLEY:**

9 **Q.** All right. Let's put up what's been marked as  
10 Exhibit 2749. This is the demonstrative that you walked  
11 through with Mr. Reeves earlier today.

12           And if we could go to the fourth page, I think, which  
13 shows Q1 2009.

14           This is the chart that you prepared, Mr. Yelland, along  
15 with others who worked with you?

16 **A.** Yes.

17 **Q.** And at the top it says "Adjusted Autonomy Group  
18 Consolidated Revenue"; right?

19 **A.** Yes.

20 **Q.** And then there's a line at the bottom that says "Restated  
21 Revenue"?

22 **A.** Yes.

23 **Q.** And just so we're very clear about this, the Autonomy  
24 group revenue was never restated? Those accounts were not, in  
25 fact, restated; correct?

1 A. At the point that Autonomy group was acquired by HP group,  
2 Autonomy group was no longer required to file -- to prepare or  
3 file financial statements. So in effect there was -- we didn't  
4 file 2011 group financial statements for Autonomy because by  
5 the end of that period, it was part of HP.

6 Q. That's a long way of saying no -- right? -- that the  
7 Autonomy group consolidated accounts were not restated;  
8 correct?

9 A. So as we -- as we don't prepare the 2011 accounts, there's  
10 no 2010 comparatives to restate. So inevitably there's no  
11 restatement because the group accounts aren't prepared.

12 Q. So, again, the answer is no, there's no --

13 THE COURT: Well, he's explaining. You asked him "You  
14 didn't file this," and he says, "No, because we're not required  
15 to file it and, by the way, it's a restatement or it's --  
16 somehow the entity doesn't go out of existence but it's not  
17 reported the same way. And so, yes, you're right, we didn't  
18 file it," and so he explains it.

19 Now, the reason I'm giving witnesses latitude in  
20 explaining, which I understand normally can be simply left to  
21 the opposing counsel to ask the question why, is to enable the  
22 jury as the testimony comes in to gather -- to have a context  
23 and an explanation as to these statements because the Court  
24 feels that it is essential in this case, which is so -- which  
25 is an accounting case in many respects and not necessarily the

1 familiar subject of any of us, that they get evidence in the  
2 context so that they can evaluate it properly.

3 So I'm just telling you, Counsel, because I've done this a  
4 number of times and you come back and say, "Well, your answer  
5 is yes. Your answer is no." That may be true -- that is true,  
6 not even maybe, it is true -- but I'm allowing witnesses to  
7 explain. Okay? And so be guided by that. In other words, if  
8 there is a question you're asking, understand that I'm going to  
9 give the witness latitude to explain his answer.

10 Okay. Thank you. Go ahead.

11 **MR. DOOLEY:** Thank you, Your Honor.

12 **Q.** Mr. Yelland, so we discussed before the Autonomy group  
13 level accounts, the Autonomy Corporation accounts, were  
14 prepared under IFRS; right?

15 **A.** Yes.

16 **Q.** And you are not an expert on IFRS accounting, are you?

17 **A.** No, but I make sure on my team they are.

18 **Q.** Let's just look at Exhibit 6781, please.

19 (Pause in proceedings.)

20 **MR. DOOLEY:** Your Honor, we can move on actually.

21 **THE COURT:** Okay.

22 **BY MR. DOOLEY:**

23 **Q.** Mr. Yelland, your training was not under IFRS; right?  
24 Your training was under U.K. GAAP?

25 **A.** Correct.

1 Q. And when you were at -- when you left Arthur Andersen and  
2 you were teaching, you were teaching U.K. GAAP principles?

3 A. Principally, yes. There was a little bit of IFRS involved  
4 but it was principally U.K. GAAP.

5 Q. And then at the Rover Group, you worked under U.K. GAAP;  
6 is that right?

7 A. Yes.

8 Q. And then at Compaq, that was -- you didn't use IFRS there  
9 either, did you?

10 A. No. I had to understand a new GAAP to me, U.S. GAAP.

11 Q. U.S. GAAP. U.S. GAAP but not IFRS?

12 A. Correct.

13 Q. All right. And then during your time at HP, you were  
14 using U.S. GAAP and not IFRS; right?

15 A. Correct.

16 Q. Okay. And just if we can call up 2749 again, the  
17 demonstrative, and if we can look at page 4.

18 Why don't we move ahead, actually, to the next quarter.

19 There's an amount there, a line for hardware revenue;  
20 right?

21 A. Yes.

22 Q. Okay. But that's separate from the restated revenue;  
23 right?

24 A. Yes.

25 Q. Separate from the restated line; right?

1     **A.**    Yes.

2     **Q.**    And that reflects the conclusion that the hardware revenue  
3    was properly recognized as revenue; correct?

4     **A.**    It was properly recognized, yes, but it's also showing the  
5    conclusion that it's not properly disclosed.

6           **MR. DOOLEY:** Your Honor, I move to strike that.  
7    That's nonresponsive and not an explanation for the --

8           **THE COURT:** Wait.

9           **MR. REEVES:** It is responsive.

10                   (Pause in proceedings.)

11           **THE COURT:** Overruled.

12    **BY MR. DOOLEY:**

13    **Q.**    Mr. Reeves asked you, Mr. Yelland, about a number of  
14    adjustments to the -- a number of adjustments reflected in this  
15    exhibit related to license sales.

16           All of the adjustments that are proposed here relate to  
17    transactions that were originally booked by Autonomy's  
18    management at the relevant time back in -- for example, back in  
19    Q2 2009; correct?

20    **A.**    Yes.

21    **Q.**    And the transactions that appear to be adjusted in this  
22    demonstrative exhibit were reviewed by Deloitte at the relevant  
23    time; correct?

24    **A.**    I'm not really aware of what Deloitte did or didn't do.  
25    They were the auditors of the company.

1 Q. Okay. Well, that leads me to my next question. Have you  
2 reviewed Deloitte's work papers with respect to the  
3 transactions that are reflected in 2749?

4 A. No, and I wouldn't have the right to do so.

5 Q. Okay. So you don't know whether each of --

6 THE COURT: If he didn't review the papers, I don't  
7 know whether you can ask him, and the papers are not in  
8 evidence -- or maybe they are. Are you referring to some paper  
9 in evidence?

10 MR. DOOLEY: Well, the --

11 THE COURT: If you're not referring to a paper -- if  
12 you're not referring to a paper in evidence and he didn't  
13 review the paper, you can't ask him any questions about it. If  
14 it is in evidence, you can ask him some questions about it; or  
15 if he reviewed it, you can ask some questions about it; but  
16 absent that, you can't.

17 MR. DOOLEY: Fair enough, Your Honor. The work papers  
18 are in evidence, but I'll move on.

19 THE COURT: Well, if they're in evidence -- if they're  
20 in evidence, you can ask him about it, if -- I'm not  
21 foreclosing you from asking him about something that's in  
22 evidence. Just point it out to him whatever it is, and he can  
23 see it and you can ask him questions about it.

24 MR. DOOLEY: Thank you, Your Honor.

25 Q. In any event, Mr. Yelland, you're aware, even though you

1 haven't reviewed the work papers, that Deloitte gave clean  
2 audit opinions on Autonomy's quarterly and annual accounts for  
3 the time period reflected in the demonstrative exhibit;  
4 correct?

5 **A.** Yes.

6 **Q.** And what the demonstrative exhibit reflects is your  
7 judgment of the correct accounting for these transactions as of  
8 2018; correct?

9 **A.** Yes, mine and my team's, but ultimately I'm responsible.

10 **Q.** If we could go and look at the 27 -- put the demonstrative  
11 back up, Jeff, if we could, 2749 for Q4 2009.

12 You were asked some questions about the Capax/Eli Lilly  
13 deal. Do you remember that, Mr. Yelland?

14 **A.** Yes.

15 **Q.** And I think you referred to it as a deal involving  
16 acceleration of revenue?

17 **A.** Yes.

18 **Q.** You understood -- or you understand, Mr. Yelland, that in  
19 Q4 2009 and following quarters, Autonomy recognized revenue on  
20 sale to the reseller not on the ultimate sale to the end user;  
21 correct?

22 **A.** I understand, yes.

23 **Q.** And you understand and you know that in this instance,  
24 this transaction, Capax signed a reseller agreement that  
25 provided that it owed Autonomy for the license that it bought

1 regardless of whether it could sell the license on; correct?

2 **A.** I would disagree.

3 **Q.** Do you know, Mr. Yelland, whether -- well, let me ask you.

4 Have you reviewed the transcripts of testimony in this  
5 trial?

6 **A.** No.

7 **Q.** Do you know, Mr. Yelland, whether Deloitte at the relevant  
8 time was aware that this was a transaction that was sold  
9 directly from Autonomy to Eli Lilly?

10 **MR. REEVES:** Objection. Foundation.

11 **THE COURT:** Sustained.

12 **MR. DOOLEY:** I'm just asking if he does know,  
13 Your Honor, but okay.

14 **Q.** And, again, Mr. Yelland, your adjustment of the  
15 Capax/Eli Lilly transaction, that reflects your judgment today  
16 in 2018 about the correct accounting back in the fourth quarter  
17 of 2009; correct?

18 **A.** The restatement does, yes.

19 **Q.** Looking at the first quarter of 2010 that you were asked  
20 some questions about the MicroTech/Vatican Library deal. Have  
21 you ever spoken to Mr. Tony Jimenez, Mr. Yelland?

22 **A.** I haven't, no.

23 **Q.** So do you know one way or the other whether Mr. Jimenez  
24 was excited about the opportunity of selling services to the  
25 Vatican Library in connection with this deal?



1           **MR. REEVES:** Objection, Your Honor.

2           **THE COURT:** Sustained.

3                           (Pause in proceedings.)

4   **BY MR. DOOLEY:**

5   **Q.** And you were asked some questions about the third -- the  
6   FileTek transaction with respect to the Veterans Administration  
7   in the third quarter of 2010. You know that FileTek signed a  
8   reseller agreement with Autonomy that provided that they were  
9   able to sell the software on to a different end user if they  
10   were not able to sell it to the Vatican -- I'm sorry -- the  
11   Veterans Administration; right, Mr. Yelland?

12   **A.** Yes.

13   **Q.** And I think you acknowledged in your testimony that  
14   FileTek paid Autonomy for this software that they purchased in  
15   Q3 2010; right?

16   **A.** Yes, shortly after Autonomy had paid them for software  
17   that they had purchased from FileTek.

18   **Q.** Mr. Yelland, I want to switch gears and show you an  
19   exhibit marked as TX6794. It's an e-mail with several  
20   attachments that are in Excel format.

21   **A.** (Witness examines document.)

22           **MR. REEVES:** No objection, Your Honor.

23           **THE COURT:** 6794 admitted.

24                   (Trial Exhibit 6794 received in evidence)

25   \\

1 **BY MR. DOOLEY:**

2 **Q.** Do you see, Mr. Yelland, this is an e-mail from Rachel  
3 Haverfield to yourself attaching various Excel spreadsheets?

4 **A.** (Witness examines document.) Yes.

5 **Q.** And I'd like to call your attention to -- there's -- one  
6 of the spreadsheets -- do you see in one of the attachments  
7 it's called "ERP Billings 2009 to November 16, 2011"? Do you  
8 see that?

9 **A.** (Witness examines document.)

10 **Q.** It won't be attached, but it's reflected in the e-mail,  
11 the subject line of the e-mail, the first.

12 **A.** Yeah. I can see that the e-mail appears to attach the  
13 spreadsheets, yeah.

14 **Q.** Okay. And ERP, what is ERP?

15 **A.** That was one of the billing systems for Autonomy.

16 **Q.** And the ERP system recorded transactions for Autonomy  
17 businesses with the exception of MicroLink, Interwoven, Zantaz,  
18 and Iron Mountain; is that right? They had their own systems?

19 **A.** I believe so. That sounds right.

20 **Q.** Okay. And this keeps track of sales transactions;  
21 correct?

22 **A.** Yes.

23 **Q.** If we could look at TX6794A, which is the native version  
24 of this.

25 There's a lot here, but do you recognize this as a

1 spreadsheet reflecting the ERP billing?

2 **A.** I've not seen it before.

3 (Witness examines document.) But I don't have any reason  
4 to doubt that it may be.

5 **Q.** Okay. And if we could look at the -- we're on the all  
6 data and these rows, these are sales transactions recorded by  
7 the Autonomy business units other than the four we mentioned?  
8 Is that what's reflected on these rows?

9 **A.** (Witness examines document.) Well, I haven't seen this  
10 spreadsheet before, but it's likely that it does.

11 **Q.** Okay. And if you -- Jeff, can we highlight one of the  
12 columns to see how many rows there are here?

13 Do you see down at the bottom of the page, Mr. Yelland,  
14 there's a count and it says 22,442 at the very bottom of the  
15 screen?

16 **A.** (Witness examines document.) I see that, yes.

17 **Q.** Does that appear to be the count for the number of rows  
18 reflecting these transactions? We could scroll down and count,  
19 I suppose, but...

20 **A.** (Witness examines document.) Yes. I mean, that's what I  
21 expect a spreadsheet to show given that information.

22 **Q.** Okay. And looking at the information that's on this ERP  
23 billing spreadsheet and the number of rows and the date,  
24 Mr. Yelland, does Exhibit 6794A appear to show that between  
25 2009 and November 16th, 2011, Autonomy entered into 22,440-plus

1 sales transactions?

2 **A.** (Witness examines document.) I'm not sure. I think the  
3 transactions on here may be all of the individual invoices.  
4 You may have more than one invoice related to a customer order.  
5 It could show credits as well and rebillings. So I think it's  
6 a volume of transactions. It's not necessarily a volume of  
7 actual sales made to customers.

8 **Q.** And your point is there might be multiple invoices with  
9 respect to a particular transaction?

10 **A.** Yeah. I just wanted to be clear.

11 **Q.** Okay. But you would agree that Exhibit 6794A reflects  
12 approximately 22,440 transactions during the time period 2009  
13 through November 16th, 2011?

14 **MR. REEVES:** Objection. Foundation. It's in  
15 evidence, Your Honor.

16 **THE COURT:** Sustained.

17 **BY MR. DOOLEY:**

18 **Q.** Let me direct your attention to Exhibit 6794C, which is a  
19 second attachment. It will pop up.

20 And I'll represent to you that this is the attachment with  
21 the title "NIBS EAS Billing 2009-2011." Do you recognize --  
22 what is NIBS?

23 **A.** It's another one of the billing systems.

24 **Q.** And does this appear to be a record of the NIBS billing  
25 system sales transactions in the NIBS billing system?

1     **A.**     Again, as with the last one, I've not seen it before. It  
2     looks like it likely is. I'm willing to understand from the  
3     e-mails that's probably what it is. You're representing to me  
4     that it is the one from the e-mail, so it would appear to be,  
5     yes.

6     **Q.**     Okay. And then can we -- Jeff, can you select a column so  
7     we can see the count number?

8             And, again, do you see it says 1823 at the bottom?

9     **A.**     Yes.

10            **MR. REEVES:** Objection. Foundation. It's in  
11     evidence.

12            **THE COURT:** Wait a minute.

13            **MR. REEVES:** He's reading from the document that the  
14     witness doesn't know anything about.

15            **THE COURT:** What is your question about this document?  
16     He doesn't know anything.

17            Is that correct? Do you know anything about this  
18     document?

19            **THE WITNESS:** I've not seen it before. I can see it's  
20     attached to an e-mail I've received; but it's sent to me and  
21     Antonia, and this is detail work that she would have done and I  
22     was uninterested.

23            **THE COURT:** And what would you like to ask him about  
24     it?

25            **MR. DOOLEY:** Your Honor, I'm just trying -- I'm

1 trying --

2 **THE COURT:** Just tell me what your question is.

3 **MR. DOOLEY:** The question is whether Exhibit 6794C --

4 **THE COURT:** What I'm looking at right now?

5 **MR. DOOLEY:** Yes.

6 **THE COURT:** Okay. About what? Yes, go ahead.

7 **MR. DOOLEY:** -- shows approximately 1823 transactions  
8 in the NIBS billing system between 2009 and 2011.

9 **THE COURT:** He can answer that.

10 **THE WITNESS:** I believe it may well be, but I haven't  
11 seen it before. From the e-mail and how it's put together, it  
12 most probably is.

13 **BY MR. DOOLEY:**

14 **Q.** Okay. Thank you.

15 And then one more of these to do, Mr. Yelland. We'll do  
16 Exhibit 6794D.

17 Do you know what the Softrax ledger system is?

18 **A.** It's another billing system.

19 **Q.** If we could call up that 6794D. If we could look at --  
20 there's a tab labeled "Revenue 2009 through Q2."

21 And, Jeff, could you highlight a column?

22 And same question, Mr. Yelland. Does Exhibit 6794D appear  
23 to show approximately 4,585 transactions in Softrax ledger  
24 system from 2009 to Q2 2011?

25 **A.** Yes. Similar to my other answers, I haven't seen it

1 before. It most probably is.

2 **MR. DOOLEY:** Your Honor, may I have a moment?

3 **THE COURT:** Sure.

4 (Pause in proceedings.)

5 **BY MR. DOOLEY:**

6 **Q.** Mr. Yelland, just a couple questions on the MicroLink  
7 issue that you testified about on direct.

8 Your testimony was that MicroLink owed approximately  
9 \$23 million at the time of the acquisition; is that right?

10 **A.** That's what the Autonomy ledger said, yes.

11 **Q.** And about 6.9 million of that was with respect to a sale  
12 of software from Autonomy to MicroLink for MicroLink's internal  
13 use?

14 **A.** Yes.

15 **Q.** And that was the Introspect electronic discovery software?

16 **A.** I believe so, yes.

17 **Q.** And do you know if that amount that was owed was  
18 subsequently reclassified as an intangible asset after the  
19 acquisition?

20 **A.** That was part of the balance that was moved into North  
21 American Holdings and shown as an intangible asset.

22 **Q.** Okay. So it's correct to say that that 6.9 million that  
23 was owed from MicroLink to Autonomy was reclassified as an  
24 intangible asset and then moved into the Autonomy North  
25 American Holdings accounts?

1 A. It was moved into North American Holdings accounts and  
2 classified as an intangible.

3 Q. Okay.

4 A. It's just a slightly different order of events.

5 Q. Okay. And I think you also testified that Autonomy kept  
6 collecting payments in connection with some of the transactions  
7 that were outstanding with MicroLink, although your testimony  
8 was that they were paid by the end customers?

9 A. I testified that there was I think 800K, around about a  
10 million, of smaller invoices that I believe MicroLink  
11 ultimately paid back to Autonomy, Inc., out of the 23 million.  
12 There was a further approximately 6 million that wasn't paid by  
13 MicroLink. It was paid by other end users or other partners  
14 who sold to end users and was received by Autonomy, Inc., who  
15 didn't record those sales but instead applied those -- that  
16 revenue and that cash to the MicroLink balance. So it wasn't  
17 paid by MicroLink.

18 Q. Autonomy received 6.2 million from other customers and  
19 applied that to the MicroLink account?

20 A. Yes. Yeah.

21 MR. DOOLEY: Your Honor, the only other business at  
22 this time is I would move in 6644 pursuant to the earlier  
23 discussion.

24 THE COURT: That's the -- sorry -- the attachment and  
25 the --



1           **MR. DOOLEY:** And the e-mail that we discussed on the  
2 break.

3           **THE COURT:** -- that we discussed.  
4 Admitted.

5 (Trial Exhibit 6644 received in evidence)

6           **MR. DOOLEY:** If I could have one moment, Your Honor.

7           **THE COURT:** Of course.

8 (Pause in proceedings.)

9           **MR. DOOLEY:** Thank you, Mr. Yelland. Nothing further  
10 right now.

11                           **REDIRECT EXAMINATION**

12 **BY MR. REEVES:**

13 **Q.** Three topics. You were asked some questions about your  
14 meeting with Deloitte in or around October 2012 and the agenda  
15 that Deloitte had. Do you recall that part of your  
16 cross-examination?

17 **A.** Yes.

18 **Q.** I think you testified that the issues that you raised with  
19 Deloitte concerned only ASL deals. Do you recall that?

20 **A.** It was principally -- yes, principally ASL deals. I think  
21 there were a couple of bad debts that were existing in other  
22 companies but which were apparent in working with Deloitte.

23 **Q.** Okay. Why did you focus in the manner you've described  
24 only on ASL deals with Deloitte in this time period,  
25 Mr. Yelland?

1   **A.**   Because they were deals that, as they were done directly  
2   by ASL with end customers, Deloitte in the U.K. were auditing  
3   those specific deals directly; and I believed that the  
4   accounting for those deals was wrong. I still do. And so in  
5   engaging with Deloitte, we had to bring forward to them the  
6   previous accounting for those deals was wrong.

7   **Q.**   Okay. I think in your testimony on this topic in your  
8   cross-examination you also said that you hadn't opened up with  
9   Deloitte. Do you remember using those words?

10   **A.**   Yes.

11   **Q.**   What did you mean by that?

12   **A.**   The rebasing exercise, you know, those preliminary  
13   investigations, the beginning of the investigations also by the  
14   Legal Department using PWC, et cetera, had shown that there  
15   were wide-ranging issues; but it was still really very early  
16   days to be exposing all of those developments to Deloitte and  
17   they -- the rest of the matters were very broad across the  
18   Autonomy group but principally in the U.S.

19       And I think HP as a group wanted to spend more time to  
20   understand those properly and engage with Deloitte at the right  
21   level, not U.K. to U.K. but really at a corporate level to  
22   engage fully there.

23       So I just focused with Deloitte U.K. in the meantime on  
24   the matters that related to ASL and its direct transactions  
25   with end users.

1 Q. In this time period, given the level of possible  
2 accounting issues, were you being guarded in any way in the way  
3 you were communicating with Deloitte in this October 2012 time  
4 period?

5 A. Yes.

6 Q. You were asked some questions about U.K. GAAP and IFRS.  
7 Do you recall those questions?

8 A. Yes.

9 Q. When you were restating the transaction for ASL using the  
10 MicroLink/Vatican transaction as an example, did IFRS come into  
11 play in your evaluation of that possible set of adjustments?

12 A. When we were doing this statutory accounts?

13 Q. Yes.

14 A. Not when we were doing the statutory accounts, no.

15 Q. Why not?

16 A. Because the statutory accounts were prepared under U.K.  
17 GAAP.

18 Q. Did you ask yourself does the Vatican transaction, for  
19 example, comply with IFRS?

20 A. So at the time with the investigations being led by the  
21 legal team or with PWC, they were considering those matters  
22 and, yes, I was discussing that type of issue with PWC. I  
23 can't recall exactly which specific deal when, but over time  
24 all of the deals.

25 Q. So describe the interplay of the two accounting sets of

1 policies, U.K. GAAP and IFRS, as it related to the statutory  
2 accounts for revenue recognition and what difference, if any,  
3 the two accounting policies had in your evaluation of the  
4 adjustments that you testified about.

5 **A.** In the vast number of cases, they made no difference at  
6 all because the issues were fundamental issues.

7 **Q.** Okay. And so explain, if you would, because you were  
8 asked questions about it. What do you mean by that? Why  
9 wouldn't they make a fundamental difference?

10 **A.** Where we have an accelerated VAR deal and the reseller is  
11 not required to pay for the debt in reality, despite what any  
12 contract may say but in reality, if they're not required to pay  
13 for the debt until such time as Autonomy has closed the final  
14 deal with the end user and potentially routed the money through  
15 the reseller or Autonomy has purchased something from the  
16 reseller which doesn't have economic substance so as to give  
17 the reseller the money to pay back, well, all -- all of the  
18 different GAAPs really come to the same conclusion. You  
19 haven't made a proper sale.

20 **Q.** Whether it's under U.K. GAAP or IFRS?

21 **A.** You haven't earned anything until the true sale where  
22 you're really expecting to be able to collect the cash and,  
23 et cetera, and the customer's really taken ownership of the  
24 asset. That occurs on the final sale.

25 **Q.** Last topic. You were asked a series of questions about

1 changes in the accounting policies. Do you recall that?

2 **A.** Yes.

3 **Q.** Did the retroactive changes in the accounting policies  
4 have any impact on the summaries that you prepared and you've  
5 testified about?

6 **A.** No. And when we saw the -- after we'd finished doing the  
7 quarterly pages, when we looked at the overall pages that  
8 showed the years, there was actually a row in there that had  
9 change in accounting policies and that had zeros across that  
10 row. We didn't focus on it at the time.

11 **Q.** It was actually a piece of the summary we didn't look at  
12 today; is that correct?

13 **A.** Correct.

14 **Q.** But it said zero?

15 **A.** Yes.

16 **MR. REEVES:** Just a moment, please.

17 (Pause in proceedings.)

18 **MR. REEVES:** Thank you, Your Honor. Nothing further.

19 **THE COURT:** Anything further?

20 **MR. DOOLEY:** Nothing further.

21 **THE COURT:** Thank you very much. You're excused,  
22 Mr. Yelland. Thank you.

23 (Witness excused.)

24 **THE COURT:** Maybe we'll take a recess now. Well, what  
25 do we have? We have the agent I know, but do we have anything

1 else other than the agent?

2 **MR. FRENTZEN:** We have two witnesses. It may be best  
3 to talk about it --

4 **THE COURT:** Okay. Best to talk.

5 **MR. FRENTZEN:** -- if the Court wants to take a short  
6 break.

7 **THE COURT:** Best to talk not with you people, best to  
8 talk with me.

9 So, ladies and gentlemen, let's take a recess until 20 to  
10 3:00, 20 -- is it 20 to 2:00 or 20 to 3:00? Fortunately it's  
11 20 to 3:00.

12 Okay. Remember the admonition given to you: Don't  
13 discuss the case, allow anyone to discuss it with you, form or  
14 express any opinion.

15 (Proceedings were heard out of the presence of the jury:)

16 **THE COURT:** Okay. Let the record reflect all jurors  
17 have retired.

18 Yes, who's left?

19 **MR. FRENTZEN:** I just want to let the Court know where  
20 we are. So we've got the agent, Special Agent Alex Bryant, and  
21 we have David Toms, who we expect to be maybe 20, 30 minutes.

22 I'm a little -- I'm concerned that direct and cross of  
23 Agent Bryant is not going to occur today. I'm warning the  
24 Court that though we had a drop-dead at the end of the day, we  
25 may go into the morning.

1           **THE COURT:** No, no. If it's not, then I'll let you go  
2 tomorrow. I mean, that's -- tomorrow morning.

3           **MR. FRENTZEN:** Right.

4           **THE COURT:** I want to get -- I mean, because we have  
5 an hour and 20 minutes. How long is Mr. Toms going to take?  
6 You say half an hour?

7           **MR. REEVES:** About a half an hour. We'd like to  
8 start --

9           **THE COURT:** You've not been great on predictions. I  
10 have you on the record when Mr. Yelland was going to take an  
11 hour. That's what you said. You weren't under oath, but  
12 that's what you said.

13           So I want a realistic idea, not a hope, not a wish. I  
14 want a realistic idea because I think you ought to start with  
15 Mr. Toms. I don't know if there's an objection to Mr. Toms or  
16 not. Have we dealt with that?

17           **MR. REEVES:** I don't think there's any objection.  
18 We'd like to start with Special Agent Bryant, though, because  
19 if we were to run up against a deadline, we definitely --

20           **THE COURT:** You're not going to run up against a  
21 deadline. Okay?

22           **MR. REEVES:** Okay.

23           **THE COURT:** I assume you can conclude with Mr. Toms,  
24 and the agent you will conclude early tomorrow morning.

25           **MR. FRENTZEN:** Yes, Your Honor.

1           **THE COURT:** Isn't that right?

2           **MR. REEVES:** Yes.

3           **MR. FRENTZEN:** Yes, Your Honor.

4           **THE COURT:** Okay. All right. So that's fine. That's  
5 okay. You know, we knocked off early on the other day because  
6 a juror was sick or something, and so that's fine. That's  
7 fine. They're going to start their case tomorrow in any event,  
8 and we'll get going.

9           **MR. REEVES:** Okay.

10          **THE COURT:** So as to these witnesses, however, I don't  
11 want to get embroiled in an evidentiary dispute as to these  
12 witnesses. Is there anything that I have to deal with  
13 Mr. Toms?

14          **MR. KEKER:** Not Toms.

15          **THE COURT:** Okay.

16          **MR. KEKER:** But Bryant we have objections to some of  
17 the exhibits.

18          **MR. FRENTZEN:** I thought we discussed them *ad nauseam*.

19          **THE COURT:** Well, no, we have discussed nothing  
20 *ad nauseam*.

21          **MR. KEKER:** The order says --

22          **THE COURT:** I've never felt better.

23               So is there -- have you identified -- this is what I'd  
24 like you to do, Mr. Keker: I'd like you to sit down with  
25 Mr. Frentzen and I'd like you -- I'd like you to just say,



1 "Here are the exhibits we object to."

2 **MR. KEKER:** I'll give him a list.

3 **THE COURT:** And have a little discussion.

4 **MR. KEKER:** I'm not going to sit down with him, but  
5 I'll give him a list. That's fine.

6 **THE COURT:** Give him a list.

7 **MR. KEKER:** Right.

8 **THE COURT:** You might also indicate why you are  
9 objecting.

10 **MR. KEKER:** Hearsay.

11 **THE COURT:** Oh, okay. That's fair enough.

12 **MR. FRENTZEN:** I understand that.

13 **THE COURT:** Okay. Give him a list and then if there  
14 are -- if they're unresolved, then I'll have to rule on them.

15 **MR. FRENTZEN:** And I apologize. I thought we were  
16 back on the two summaries; so if we're not on that, then,  
17 great, it's something new.

18 **THE COURT:** Okay. Now, as to what happened during the  
19 course of this, I mean, Mr. Dooley introduced the draft to  
20 which, properly so, the Government said, "Oh, the draft is in.  
21 We might as well have the other in."

22 **MR. KEKER:** We withdraw it, Your Honor.

23 **THE COURT:** Okay. And I think -- I'm going to allow  
24 that. I'm actually going to allow you to withdraw it because  
25 you didn't have a full appreciation of the consequences of

1 offering it, and I will also -- I don't know what else --  
2 whether I need to do anything.

3 **MR. FRENTZEN:** Strike the testimony.

4 **MR. REEVES:** Yes.

5 **THE COURT:** I think I do have to strike the testimony.

6 **MR. DOOLEY:** That's fine.

7 **THE COURT:** Okay. There wasn't much anyway.

8 **MR. FRENTZEN:** No, but whatever was there, should be  
9 stricken.

10 The only other thing was they offered the document that we  
11 had argued about before, but they didn't ask any questions,  
12 which is fine, but --

13 **THE COURT:** They didn't. I did notice that.

14 **MR. KEKER:** Well, but --

15 **MR. FRENTZEN:** So at -- excuse me -- at some point, if  
16 it reemerges, which I have a feeling it will, the Court should  
17 be instructed at that point.

18 **THE COURT:** I do have to say something to the jury.  
19 It hasn't been shown to the jury either.

20 **MR. FRENTZEN:** Correct. Whenever they --

21 **THE COURT:** But it is in evidence subject to, in my  
22 view, some connection with something.

23 **MR. FRENTZEN:** Thank you, Your Honor.

24 **THE COURT:** It's untethered hanging out there.  
25 Okay. We can all take a break.

1           **MR. REEVES:** Thank you, Your Honor.

2           **MR. FRENTZEN:** Thank you, Your Honor.

3           **MR. KEKER:** I didn't understand the last thing you  
4 said. What do you mean untethered to something? It is  
5 untethered --

6           **THE COURT:** Untethered to a witness.

7           **MR. KEKER:** Okay. Well, so what I guess is our --

8           **THE COURT:** I guess that's a good point. You are  
9 entitled to bring in documents even if it's not tethered to  
10 something; but I don't think you can get up and say, "Here are  
11 10 documents we'd like in," even though they do come in.

12           **MR. KEKER:** Well, we'll see with Agent Bryant.

13           **THE COURT:** Yes.

14           **MR. KEKER:** We did it with Mr. Yelland so that if they  
15 wanted to ask questions of Mr. Yelland about the chart and so  
16 on, that was fine.

17           **THE COURT:** Actually, you're right.

18           **MR. KEKER:** We're nice guys.

19           **THE COURT:** Extremely nice.

20           I let it in for that very reason at that time to give the  
21 Government the opportunity if they wanted to examine  
22 Mr. Yelland about it. They chose not to. That was their  
23 decision.

24           **MR. REEVES:** Thank you, Your Honor.

25                           (Recess taken at 2:28 p.m.)

1 (Proceedings resumed at 2:40 p.m.)

2 (Proceedings were heard out of presence of the jury:)

3 **THE CLERK:** Come to order. Court is now in session.

4 **THE COURT:** Okay. Bring in the jury.

5 Before the jury comes back, turning to the Defense, you  
6 believe you will rest sometime next week. Has that changed?  
7 Or the end of this week?

8 **MR. KEKER:** I think we will probably rest this week.

9 **THE COURT:** Okay. I will be careful what I say to the  
10 jury, but I want to give them some idea.

11 **MR. KEKER:** What I was thinking was that if we rest  
12 this week, we could argue Monday and that half day that you  
13 have on Tuesday, if we can fit it all in. We want to make sure  
14 that it all is of a piece --

15 **THE COURT:** That's not a bad idea.

16 **MR. KEKER:** And then until 12:30 or 1:00 on Tuesday.  
17 We can talk about it later.

18 **THE COURT:** One thing I want to do to give some  
19 assurance to the Defense, I don't want one side to have the day  
20 at the end to argue. In other words -- in other words, I think  
21 the Government will open. I don't know how long they're going  
22 to be. But then the Defense is going to start. They're not  
23 going to take the full day. I don't know. I'm looking at  
24 them. They're not agreeing with me, so I don't know where they  
25 are on it.

1 But in any event, I will make sure that before -- before  
2 the Government gives its rebuttal, the Defense has the  
3 opportunity of addressing the jury in some manner for some  
4 period of time, so you don't have -- so everybody doesn't sleep  
5 on the two arguments and then the Government gets up and gives  
6 its argument.

7 **MR. KEKER:** I think it's just -- what we would like to  
8 do is have fairly strict time limits that are equal --

9 **THE COURT:** I can do that. But I need to think about  
10 it. I need to hear from the parties and then think about it.

11 **MR. KEKER:** Then we can figure out how to divide it  
12 up.

13 **THE COURT:** But I need to sort of talk to them about  
14 it. There is just no way I cannot go to this --

15 **MR. KEKER:** That's fine. I think --

16 **THE COURT:** -- meeting on Tuesday.

17 **MR. KEKER:** If we have five and a half hours or six  
18 hours on Monday and another two or three hours -- if we can't  
19 get this case argued in eight hours, four hours each --

20 **THE COURT:** The only problem I have is that I've got  
21 to then instruct them before. I always instruct them before.  
22 Maybe I should instruct them afterwards. I don't care. I  
23 mean, that's one way of dealing with it. The instructions  
24 won't be that long, but we have to have our conference. We've  
25 got the rest of the week to figure out when to have our

1 conference.

2 Okay. Thank you.

3 **MR. KEKER:** One thing that could affect us is we have  
4 a motion that we would like to talk about at the end of the day  
5 about admitting a couple of documents that would have been  
6 admitted had Sarin and Gersh been operating under different --

7 **THE COURT:** I'll address that.

8 **MR. KEKER:** So we don't have to call them back.

9 **THE COURT:** I'm not sure I would let them come back.  
10 But that's another issue. We will talk about that at the end  
11 of the day.

12 **MR. KEKER:** Okay.

13 **THE COURT:** Okay. Bring in the jury.

14 (Proceedings were heard in the presence of the jury:)

15 **THE COURT:** Let the record reflect all parties are  
16 present, the jury is present.

17 Go ahead, Mr. Reeves.

18 **MR. REEVES:** Thank you, Your Honor. At this time, the  
19 United States calls Mr. David Toms.

20 **THE CLERK:** Please rise to be sworn. Please raise  
21 your right hand.

22 **DAVID TOMS,**

23 called as a witness for the Government, having been duly sworn,  
24 testified as follows:

25 **THE WITNESS:** I do.

**TOMS - DIRECT / REEVES**

1           **THE CLERK:** Thank you. Please be seated.

2           Please state your full name for the record and spell your  
3 as last name.

4           **THE WITNESS:** David Ian Toms, T-O-M-S.

5                           **DIRECT EXAMINATION**

6           **BY MR. REEVES:**

7           **Q.** Good afternoon, Mr. Toms. Where are you from?

8           **A.** I am from England. Just outside.

9           **Q.** All right. What do you do for a living?

10          **A.** I'm a financial analyst for Numis Securities.

11          **Q.** How long have you been a financial analyst for Numis  
12 Securities?

13          **A.** Since October 2005.

14          **Q.** What is your educational background, please, before you  
15 started to work at Numis?

16          **A.** My original educational background is I studied  
17 biochemistry at Cambridge University in England.

18          **Q.** As an analyst at Numis, what kind of companies did you  
19 cover?

20          **A.** Predominantly technology companies and nearly all of them  
21 software companies.

22          **Q.** Are you familiar with a company known as Autonomy?

23          **A.** I am, yes.

24          **Q.** Did you cover Autonomy as an analyst at Numis?

25          **A.** I did.

1 Q. I would like to direct your attention, if I could, to the  
2 time period 2009 to 2011 and talk about your coverage of  
3 Autonomy in that time.

4 Do you have a recollection of the work that you did  
5 relating to Autonomy?

6 A. I do, yes.

7 Q. Maybe at a high level you could describe your perspective  
8 on Autonomy during those years, and then we'll go into some of  
9 your reports.

10 What do you recall about some of the issues relating to  
11 your coverage of Autonomy in the years 2009 through 2011?

12 A. I think in terms of slightly broader background, I had  
13 followed the stock since 2005 at Numis. Structurally it was a  
14 stock on which I was quite positive. It formed a part of our  
15 model portfolio of stocks that we thought were good long-term  
16 investments for investors.

17 Specifically the period 2008, '9, '10, I was, at times --  
18 at times a little more neutral or negative on the company  
19 because in particular, I was concerned about the economic  
20 backdrop.

21 We saw, as you may recall, 2008, '9, '10 was a pretty deep  
22 recession and in addition there was some specifics at that time  
23 around the complexities of trying to unpick the numbers from  
24 acquisitions and some issues with the numbers that led me to  
25 have questions that sometimes were answered and sometimes



1 weren't.

2 Q. All right. I would like to direct your attention, if I  
3 could, to in or around April 2010, on or about April 21st,  
4 2010, and Autonomy's first quarter 2010 earnings call.

5 A. Okay.

6 Q. Do you have a recollection of that?

7 A. I do, yes.

8 Q. And did you listen in and ask questions in the call?

9 A. I did, yes.

10 Q. Okay. Even today, do you have a recollection of some of  
11 the issues that arose in -- as it related to your coverage of  
12 Autonomy in the earnings call on or around April 21, 2010?

13 A. I do, yes.

14 Q. What do you recall about that earnings call, please?

15 Withdrawn.

16 That was a call that involved Mr. Hussain and Dr. Lynch?

17 A. That's correct.

18 Q. Okay. Go ahead. What do you remember about that earnings  
19 call, please.

20 A. There was a particular feature in the financial statements  
21 that period so it was -- the earnings call took place in April  
22 2010. The financial period was January, February, March 2010,  
23 so the first quarter of the year.

24 The -- there was an unusual feature, the numbers that  
25 period, which is there was \$10 million worth of stock on the

1 balance sheet. Seeing stock in software companies is quite  
2 unusual. Stock is something more associated with companies  
3 that are selling physical items rather intangible things like  
4 software.

5 So there was \$10 million worth of stock which there was a  
6 lot of questioning about on the call, including from me.

7 **Q.** Why would \$10 million of stock -- withdrawn.

8 As you use the word "stock," what would that mean for a  
9 company like Autonomy? What are you referring to?

10 **A.** Well, initially it was slightly unclear, although what the  
11 company explained on the call was that that related to hardware  
12 that had been purchased for one of Autonomy's particular  
13 products, a product line called Arcpliance, where the product  
14 was sold as hardware and software combined.

15 As you're probably aware, software requires hardware to  
16 run. Computer software on its own is no use to anybody. It  
17 needs some kind of hardware to run on. And customers  
18 purchasing Autonomy software would need to run its own  
19 hardware.

20 The Arcpliance product line had the software pre-installed  
21 on the hardware and was sold as a bundled item with the  
22 hardware and the software together.

23 **Q.** That's what you were told?

24 **A.** That's what we were told, yes.

25 **Q.** By whom?

1 A. By Mr. Hussain and Dr. Lynch.

2 Q. All right. Do you remember Mr. Hussain addressing this  
3 \$10 million in hardware stock during this earnings call?

4 A. I do, yes. He identified that the company had taken the  
5 option to prepurchase some hardware at attractive prices for  
6 use in -- with the Arcpliance product in sales going forward,  
7 in particular in sales in the second quarter.

8 Q. Why was that unusual? Why did the \$10 million of hardware  
9 stock, as disclosed by Mr. Hussain -- why was that unusual to  
10 you?

11 A. The number seemed very large because typically with  
12 high-end computer software, the software can be very  
13 substantially more valuable than the hardware. So for every  
14 dollar spent on hardware, you might be spending two or three  
15 dollars on software.

16 And, indeed, the company identified that as being the case  
17 on this -- on this conference call, that the -- that the  
18 majority of the revenue related to the software in an  
19 Arcpliance sale.

20 So if that were the case, then with \$10 million of  
21 hardware, that would suggest you would be selling 20 or \$30  
22 million of software associated with that, which in the context  
23 of the amount of software Autonomy was selling was a very large  
24 proportion of its software.

25 Q. In this time period is one of the things that you're

1 trying to do is to project future sales and potential future  
2 growth by examining disclosures like the existence of  
3 \$10 million hardware stock?

4 **A.** Yes. As part of the role of an analyst, one of the things  
5 that I'm trying to do is identify what I think earnings will be  
6 in the future, what kind of growth rates I think the company  
7 will deliver, and how sustainable the earnings are for the  
8 business.

9 And to do that, you also need to know where you are  
10 starting from, so what are the numbers for the quarter and then  
11 take a view where those will go. And something like the  
12 hardware sales of this nature are the kind of thing I would  
13 look at and question the sustainability of, can that be  
14 repeated in future quarters or should I take that out of the  
15 numbers and work from a lower baseline and grow from there.

16 **Q.** As a result of your sort of focus on this issue, did you  
17 ask questions during the question-and-answer period of the  
18 earnings call in or around April 21st, 2010?

19 **A.** I did, yes.

20 **Q.** And do you recall asking questions to Dr. Lynch in that  
21 time period and getting answers about this subject, about the  
22 \$10 million in hardware stock?

23 **A.** Yes. I mean, I asked a question to the management team  
24 which was answered by Dr. Lynch which identified that the  
25 hardware sales related purely to sales of a bundled product of

1 software and hardware together as this Arcpliance.

2 Q. I'm sorry to interrupt you, but I prefer if you please  
3 cast it as what was your question and what was the answer given  
4 to you by Dr. Lynch, if you don't mind.

5 A. Certainly, yes. Can you remind me of the exhibit number,  
6 please, and then I can --

7 Q. Sure. If it would help you, take a look, please, at what  
8 is marked for identification as Exhibit 776. This is a  
9 transcript of the earnings call on or about April 21st, 2010 at  
10 page 14.

11 Do you have 776?

12 A. I have that.

13 Q. Take a look at the bottom of page 14. There appears to be  
14 a question by you and an answer by Dr. Lynch.

15 A. Yes. So my question --

16 Q. Does that refresh your recollection?

17 A. It does refresh my recollection, thank you, yes.

18 So my question was -- do you want me to read it out or try  
19 to summarize what I was asking?

20 Q. I think the Court might prefer you to look at it and then  
21 tell us your best recollection refreshed by the document.

22 A. Okay. What I was trying to find out was how Autonomy was  
23 going to disclose this hardware revenue going forward because  
24 if there was \$10 million of stock on the balance sheet at the  
25 end of Q1, stock is something that you haven't actually sold

1 yet. So that means it's going to be sold in future quarters,  
2 which means in future quarters, it would be in the revenue  
3 line.

4 And I wanted to understand how it would come through to  
5 the revenue line and whether the company would explicitly break  
6 that number out for us.

7 And so I asked how it would be disclosed going forward.

8 **Q.** And what was the answer that Dr. Lynch gave, if you  
9 recall?

10 **A.** The answer -- it wasn't so -- it was a response rather  
11 than necessarily an answer. It addressed a slightly different  
12 issue, which was to tell me that this wasn't a pure hardware  
13 sale. This was only hardware being sold in the context of a  
14 bundle of hardware and software together in an Arcpliance.

15 And in the context of the other answers he had given on  
16 the call, that -- he had separately answered questions saying  
17 that the majority of the revenue related to the software  
18 component and also that this was anomalously high hardware  
19 number in the quarter.

20 So the answer that he gave me was that this was not a pure  
21 hardware sale; that Autonomy was not in the business of  
22 reselling other people's hardware. He used an analogy of a  
23 company called Morse which at that point was a London company  
24 that broadly resold other people's hardware. That was its  
25 business. He said, "We're not in that business."

1 Q. As you understood it, was the import that there was  
2 something anomalous about this \$10 million in hardware? What  
3 did you mean by that word as you used it in your last answer?

4 A. Yes. Well, the -- the overall response from the company  
5 or from Dr. Lynch to that question and others was that the  
6 hardware sales were only related to a product sale and that  
7 this was an anomalous number. I think at another point the  
8 company had mentioned the normal sales would be a fraction of  
9 the \$10 million number.

10 So that number to me struck me as an anomalous number when  
11 I saw it, and the company assured us it was, indeed, an  
12 anomalous number.

13 Q. All right. Good.

14 Let me direct your attention to what has been marked for  
15 identification as Exhibit 778. Is this an April 22nd, 2010  
16 Numis report that you wrote, Mr. Toms? Do you recognize this  
17 document?

18 A. Yes, it is. I recognize that.

19 THE COURT: Admitted.

20 (Government's Exhibit 778 received in evidence)

21 (Exhibit published to jury.)

22 BY MR. REEVES:

23 Q. This is a report that you wrote immediately following the  
24 earnings call, is it not?

25 A. That's correct, yes.

1 Q. All right. And what is your position on the stock at this  
2 point for Autonomy?

3 A. I had an add recommendation, which is a positive  
4 recommendation, for the stock.

5 Q. As in add more stock or buy more stock?

6 A. Add more stock.

7 Brief background, we have a five -- five-stage  
8 recommendation system at my firm. "Sell" is, as it says, we  
9 think you should sell all the stock. "Reduce" is negative but  
10 less so, which is we think you should reduce your position.  
11 "Hold" is slightly neither here nor there. "Add" is a positive  
12 recommendation, and "buy" is the most positive.

13 Q. Okay. So you're at add in this time period for Autonomy.

14 And let's just go through the portion of the top  
15 paragraph. You write, "Operating downgrades, EPS unchanged,  
16 etc."

17 What is the overall point that you're making in this  
18 report following the earnings announcement by Autonomy the  
19 preceding day? What's your only point that you're trying to  
20 make?

21 A. My overall point is a positive one which is that I think  
22 that things are -- that things are going reasonably well for  
23 the business. That I'm -- I'm changing my numbers slightly  
24 to -- I'm re-weighting my numbers slightly so I'm changing  
25 exactly how they fall during the year, but the overall year



1 number has not changed.

2 And I also make some commentary in here about the extent  
3 to which the business has become more seasonal; i.e., more  
4 weighted towards the end of the year.

5 **Q.** What does that mean "seasonality," "product seasonality"  
6 as it applies to a company like Autonomy? What does that mean?

7 **A.** I mean, software companies are a little bit like car  
8 dealerships in that they don't sell stuff evenly during the  
9 year. In particular, software companies tend to be weighted  
10 towards certain periods of the year.

11 In Autonomy's case, it tended to have a very strong fourth  
12 quarter in the year, the December quarter.

13 And the point I was making here is that the company  
14 appeared a little more dependent upon the fourth quarter than  
15 it usually was.

16 **Q.** If we could highlight in the middle of the paragraph that  
17 begins "particularly adjusting for hardware-related revenue."  
18 Do you see that?

19 **A.** I do, yes.

20 **Q.** You write here, "Product seasonality," parentheses,  
21 "particularly adjusting for hardware-related revenue, looks  
22 extreme; i.e., FY09 levels, although management's upbeat  
23 outlook supports a strong H2."

24 Is that second quarter or half quarter? Half year?

25 **A.** Second half of the year.

1 Q. All right. What is the point that you're making here,  
2 especially as it relates to the highlighted portion of the  
3 sentence, "particularly adjusting for hardware-related  
4 revenue"? What's your point?

5 A. My point there is that because there was \$10 million worth  
6 of stock at the end of the first quarter, which I expected to  
7 convert to revenue largely over the second quarter at this  
8 point, if I recall, then that -- that is separate from the  
9 normal business of Autonomy. That this was an unusual thing  
10 for Autonomy to do, an unusual chunk of revenue.

11 And so when trying to compare Autonomy to its history,  
12 that I was -- I was ignoring that in the analysis. I was  
13 saying let's take out the hardware. Let's just look at what  
14 the sales of Autonomy's own stuff are doing, not what the sales  
15 of other people's stuff are doing in the business. And then  
16 look at the seasonality on that basis.

17 Otherwise, Q2 would have this extra \$10 million worth of  
18 revenue in it which would distort all my calculations because I  
19 wasn't aware that such a revenue number would fall in any other  
20 year.

21 Q. Is that in part because the 10 million in appliance may be  
22 anomalous in the way you described before? Is that why you're  
23 adjusting for it in this way?

24 A. Indeed, yes. I wouldn't -- I wasn't comfortable that that  
25 would be a repeatable number.

1 Q. Let's go to page 3 of Exhibit 778, please. And if we  
2 could highlight the last paragraph above the graph. Super.

3 This portion of your report, Mr. Toms -- can you see it?

4 A. Yes.

5 Q. Okay. This portion of your report says -- makes the  
6 following point, quote, "The overall result is the profile  
7 shown below for 2004 through 2010E." Is that for "expected"?

8 A. Estimate.

9 Q. Estimated. Okay.

10 "Note that within this analysis, we have stripped out the  
11 potential one-off distortion of the hardware component of the  
12 Arcpliance sales estimated at \$10 million of," quote, "product,  
13 end quote, "revenue in Q2."

14 Do you see that?

15 A. I do.

16 Q. Are you making the same point there with regard to  
17 stripping out this 10 million in appliance sales?

18 A. Yes.

19 Q. Okay. All right. Let's move forward, if we could, to  
20 year end. On or around the 1st of February, 2010, did you --  
21 withdrawn.

22 On or about the 1st of February 2011, at or about that  
23 time, did you listen to and evaluate the year-end financial  
24 reporting for Autonomy as part of your work as an analyst at  
25 Numis?

1     **A.**    I did, yes.

2     **Q.**    I would like to show you what has been marked for  
3    identification as Exhibit 1535, please.  Is this another one of  
4    your reports dated February 1, 2011 about Autonomy?  1535.

5             **MS. LITTLE:**  It's already in evidence.

6             **MR. REEVES:**  Excellent.  Okay.

7                     (Exhibit published to jury.)

8             **THE WITNESS:**  Yes.  That's mine.

9     **BY MR. REEVES:**

10    **Q.**    Do you recognize that?  All right.

11             And now this is approximately nine months or so after the  
12    period we've just been looking at; correct?

13    **A.**    Correct.

14    **Q.**    All right.  So by February, 2011, what -- what is your  
15    evaluation with regard to Autonomy at that point?

16    **A.**    I was -- I was more negative on the stock at that point,  
17    hence the reduced recommendation.

18    **Q.**    And what led you to that conclusion or that recommendation  
19    to your clients?

20    **A.**    I felt that the growth overall in the business was slowing  
21    and also that the explanation for why the growth was slowing,  
22    that there was a transition from one particular way of selling  
23    the software to another way, was a little hard to reconcile  
24    with the numbers because we were being told that less product  
25    was being sold and more Cloud was being sold, but actually

1 within the numbers, there wasn't an acceleration in the Cloud  
2 growth.

3 So it seemed a little hard to understand, hence the title  
4 "Slow Dark Clouds," why the Cloud revenue wasn't accelerating  
5 more if there was a substitution from product revenue.

6 **Q.** All right. You write -- withdrawn.

7 Let's, if we could, please, highlight the second full  
8 sentence.

9 Thank you very much, Ms. Margen. Okay.

10 Let's just read down through the highlighted portion. You  
11 write, "Q4 revenue (244 million) looks in line with consensus,  
12 Numis (241 million) but is well behind management expectations,  
13 (265 million). Profits are also light," and you give some  
14 detail about why.

15 Continuing, "Furthermore, revenue is potentially flattered  
16 by, 1, hardware sales, Q4 gross margins, 86.5 percent  
17 consistent with Q3/09 and Q2/10, which saw elevated hardware,  
18 and, 2, a substantial spike in R&D capitalization (8 million  
19 benefit versus 4 million run rate.)"

20 What is the point that you are making there, Mr. Toms?

21 **A.** My point was that I was trying to discern how good the  
22 revenue quality was because with -- revenue growth is an  
23 important metric for me. One of the things that also matters  
24 is how you have got the revenue growth and getting revenue  
25 growth through selling more of your own high margin product is,

1 from my perspective as an analyst, a good thing. Getting  
2 revenue growth through selling more of somebody else's product  
3 at a low margin is not a good thing, as a sort of broad  
4 simplification.

5 The point I was making here is that although the revenue  
6 looked like it was okay, the gross margin was lower, which  
7 suggested that it was possible the revenue included a hardware  
8 component.

9 **Q.** So let's go carefully through that point. What was it  
10 about the reported gross margin being lower than, your word,  
11 potentially meant that there were hardware sales? What did you  
12 mean by that?

13 **A.** Well, hardware -- software, when it's sold, because it's a  
14 company's own product, it's own intellectual property, has a  
15 very high margin. Once you have built the software there is  
16 not much cost involved in selling it. So the gross margin on  
17 software is very high. It can be 90, 95, even 98 percent.

18 So for every dollar of software you sell, there is almost  
19 no direct cost associated with that software at that point.

20 **Q.** That would keep the margin very high, the gross margin  
21 very high?

22 **A.** Yes.

23 **Q.** Go on.

24 **A.** However, hardware, since Autonomy didn't manufacture its  
25 own hardware, was going to be purchased from somebody else,

1 which means that when you sell a hundred dollars of hardware,  
2 you have to spend maybe \$90, \$95, \$80, but some decent sum of  
3 money buying the hardware from somebody else.

4 So the gross margin on the hardware is going to be very  
5 much lower. It might only be 15 or 20 percent that you make on  
6 the hardware.

7 So if your overall gross margin looks unusually low, then  
8 it was a potential warning flag to me that there had been more  
9 hardware sold in the quarter than was normal.

10 Q. Is that an inference that you're drawing from simply the  
11 reduction in the amount of the gross margin as reported by  
12 Autonomy?

13 A. Correct, yes. It was an inference.

14 Q. So that's you being an analyst reading the numbers and  
15 trying to, what, think and analyze behind them as to what they  
16 may mean?

17 A. Correct, yes.

18 Q. And you write that "A possible explanation for the  
19 reduction in gross margin is potentially flattered or the  
20 revenue is potentially flattered by hardware sales." Do you  
21 see that?

22 A. Yes.

23 Q. Is that an inference that you're drawing or is that  
24 something that Autonomy told you had actually happened?

25 A. It's an inference, in particular use of the word

1 "potentially" because I was speculating about this. I was  
2 trying to work out why a number might have moved in the way it  
3 moved.

4 **Q.** Had Autonomy at any point through this point in time told  
5 you about substantial hardware sales besides the one that we  
6 went through in the first quarter, the 10 million in stock?

7 **A.** No. To the contrary, it had identified at that time that  
8 that was an unusual number.

9 **Q.** All right. And you write down below -- if we drop down a  
10 little bit to the second bullet point and highlight that,  
11 please. Let's just highlight the bolded portion. The whole  
12 thing is fine, too.

13 You write "IDOL product benefits from hardware," question  
14 mark.

15 What does that mean?

16 **A.** The -- the question mark means that I'm asking the  
17 question, really. Does IDOL product benefit from hardware? If  
18 I had known it as a fact, I would have stated "IDOL product  
19 benefits from hardware," with a full stop rather than a  
20 question mark.

21 **Q.** So it's very much a question?

22 **A.** Yes.

23 **Q.** Through this point in time, through the year-end reporting  
24 by Autonomy in or around early February, 2011, at or about the  
25 time you're writing this note, did you have any idea that



1 Autonomy had sold hardware acquired from other hardware  
2 manufacturers that was not an appliance that was devoid of  
3 software in 2010 in an amount that approximated \$99 million?

4 **A.** No.

5 **Q.** Okay. If that happened, would that have been relevant to  
6 you in your analysis of Autonomy?

7 **A.** Yes.

8 **Q.** Why would that be relevant?

9 **A.** Because the -- the margin attached to hardware is very  
10 much lower. The hardware sales -- selling somebody else's  
11 product is very different from selling your own product. So  
12 what I was interested in at Autonomy was how well was their own  
13 product, their own valuable intellectual property doing. Was  
14 that being sold -- were they selling more of that each year or  
15 less of that each year.

16 And my analysis, based on the information available to me  
17 at the time, was that Autonomy was selling more of its own  
18 software each year, and that was in the face of a market  
19 backdrop that was very, very tough. Again, switching back to  
20 '08, '9, '10, it was a horrible recession in every industry,  
21 but in particular, it was a big recession in the software  
22 industry.

23 **Q.** What effect did the 2008 recession have on most other tech  
24 stocks that you followed?

25 **A.** In 2008-2009 period, most of the software companies I

1 looked at showed significant revenue declines, certainly in  
2 their software license sales and their product sales.

3 **Q.** And was Autonomy's performance different from the other  
4 tech companies you were following in any way in this period?

5 **A.** Yes. Autonomy was a standout strong performer through the  
6 downturn. It continued to grow in an environment where many of  
7 its peers showed significant declines.

8 **Q.** All right. Everyone else was going down, but Autonomy was  
9 doing okay based on what you could see based on its performance  
10 as disclosed to you?

11 **A.** Correct.

12 **Q.** If it were the case that in 2009 Autonomy had resold  
13 hardware in an amount approximating \$53 million, that, again,  
14 is not an appliance, it's not Arcpliance, and it's devoid of  
15 Autonomy software, and you look at that amount in comparison  
16 with in 2010 the next year, \$99 million of sales of hardware of  
17 that amount, if you -- did you know those facts, if they were  
18 true?

19 **A.** I did not, no.

20 **Q.** Okay. I want to -- my question is about that growth  
21 pattern or that 53 million in 2009 to 99 million in 2010.  
22 Would that be relevant to you in any way in your assessment of  
23 Autonomy as a -- as a growth stock with high margin products?

24 **A.** Yes. I mean, from -- from recollection, my -- the product  
25 revenue in 2009 was about \$230 million and the product revenue

1 in 2010 was about \$250 million. So it grew by about \$20  
2 million year on year, ignoring currency and other factors.

3 What you've just told me is that of the 20 million of  
4 growth, 50 million was explained by selling more hardware. As  
5 I mentioned earlier, I personally wouldn't view hardware as a  
6 particularly valuable thing for Autonomy to be doing. Hardware  
7 resell companies don't get good ratings from investors.

8 So what you're telling me is that if I take out the  
9 hardware component, then Autonomy's product revenue, rather  
10 than growing year on year, shrank quite considerably year on  
11 year, and that would mean Autonomy was performing consistent  
12 with other software companies.

13 **Q.** And if that's the case, what effect as an analyst would  
14 that have on -- on Autonomy's stock if it was affected by the  
15 recession and the way other tech companies were not growing in  
16 the way that you've described -- what would be the effect on  
17 Autonomy's stock in this 2010, early 2011 time period?

18 **A.** It would have been significantly negative.

19 (Government counsel confer off the record.)

20 **MR. REEVES:** No further questions.

21 **THE COURT:** Cross.

22 **MS. LITTLE:** May I proceed, Your Honor?

23 **THE COURT:** Oh, please, yes. Thank you.

24 \\\

25 \\\

**TOMS - CROSS / LITTLE****CROSS-EXAMINATION**

**BY MS. LITTLE:**

**Q.** Good afternoon, members of the jury.

Good afternoon, Mr. Toms?

**A.** Good afternoon.

**Q.** My name is Jan Little, and I'm one of Sushovan Hussain attorneys.

You covered Autonomy from at least 2008 until 2011; right?

**A.** From 2005 to 2011, yes.

**Q.** Okay. And you've written a number of notes and reports about Autonomy?

**A.** Correct. 142.

**Q.** 142. My goodness.

And during the time you covered Autonomy, sometimes you gave it a reduced rating; right?

**A.** That's correct.

**Q.** Sometimes a hold rating?

**A.** Correct.

**Q.** Sometimes an add rating?

**A.** Correct.

**Q.** And since -- Autonomy was acquired in 2012; right? Or 2011. Excuse me.

**A.** 2011.

**Q.** In the years since you were covering Autonomy -- well specifically, starting in about 2015, you've met with the

1 prosecutors and the FBI in this case a number of times; right?

2 A. Correct.

3 Q. Twice they came to visit you in London?

4 A. Correct.

5 Q. And you've had a couple of phone call, video conferences  
6 with them?

7 A. No video conferences.

8 Q. No video conference, but a couple of phone calls?

9 A. I think I've had one phone call and I've had a meeting  
10 here as well, in addition to the ones you mentioned.

11 Q. I'm sorry?

12 A. I had a meeting in Oakland as well, in addition to the  
13 ones you mentioned.

14 Q. A meeting in Oakland. Was that last night or a different  
15 meeting?

16 A. That was a different meeting.

17 Q. And you also met with them last night?

18 A. Correct.

19 Q. You're a UK citizen; right?

20 A. Correct.

21 Q. So you -- the Government doesn't have the power to compel  
22 you to come here. You're here voluntarily; right?

23 A. I was subpoenaed to be here.

24 Q. Okay. You've been following this trial, haven't you?

25 A. I have.

## TOMS - CROSS / LITTLE

1 Q. You've been reading the court filings that you can get  
2 online?

3 A. Correct.

4 Q. There is a system called PACER where you pay a fee and you  
5 can read the pleadings and see what's happening here?

6 A. Yes. You can see some of what's happening, yes.

7 Q. You can see, for example, what witnesses are testifying?

8 A. Yes.

9 Q. And are you aware that some of your colleagues in the  
10 analyst community -- Mr. Morland and Mr. Khan and Mr. Geall --  
11 have all testified.

12 A. I was aware about Geall and Khan. I wasn't aware about  
13 Morland. I was aware that Morland was likely to testify but  
14 not that he had testified.

15 Q. Have you learned from any source the substance of those  
16 witnesses' testimony?

17 A. No.

18 Q. Okay. Did you read the newspaper article that was  
19 published after Mr. Khan testified?

20 A. No.

21 Q. Let's talk about hardware. You understood -- I'm going to  
22 focus your attention on Q3 of 2009, which is a little bit  
23 earlier than the period Mr. Reeves asked you about.

24 You understood that Autonomy had sold some hardware in Q3  
25 of 2009; right?

1 A. I -- I inferred that, yes.

2 Q. You inferred it. You looked at public documents and you  
3 infer things from the public things that you read; right?

4 A. Correct.

5 Q. Or in the case of the Q3/09, I think what happened was  
6 there was an analyst call in 2010 where Mr. Morland was asking  
7 a question about hardware sales and Dr. Lynch said something  
8 like, "Well, you're assuming there were no sales in prior  
9 quarters"?

10 A. Correct.

11 Q. Do you recall that?

12 And so from that, you deduced "oh, there were hardware  
13 sales in prior quarters"; right?

14 A. There may have been hardware sales in prior quarters,  
15 correct.

16 Q. May have been. Okay.

17 Then you testified that you also saw this \$10 million of  
18 hardware stock in Q1 of 2010 and you inferred from that that  
19 there were some hardware sales; right?

20 A. Correct.

21 Q. And then if you would take a look, sir, at Exhibit 774,  
22 which is in the black binder there, this is a note that you  
23 wrote in April of 2010.

24 And I would move its admission, Your Honor.

25 THE COURT: 774?

1 MS. LITTLE: Uh-huh.

2 THE COURT: Admitted.

3 (Trial Exhibit 774 received in evidence)

4 (Exhibit published to jury.)

5 BY MS. LITTLE:

6 Q. If we can put it up on the screen. Now I need to find it.

7 It's in the white binder, actually, but it's up on the screen.

8 Is this, sir, a note you wrote on April 21st, 2010?

9 A. Yes. That looks like it.

10 Q. And this is a note that you wrote right before the  
11 telephone call, the analyst call, that Mr. Reeves was asking  
12 you about; right?

13 Actually, let's look at page 4. It will be easier to see.

14 Jeff, if we can have page 4.

15 Up at the top the date is April 21st, 2010. Do you see  
16 that?

17 A. Yep. I see that.

18 Q. On the left-hand side, it has your name, David Toms?

19 A. Yes. That's correct.

20 Q. Okay. So this is a report you wrote on April 21st which  
21 is the same day as that analyst call that we've been talking  
22 about?

23 A. Correct.

24 Q. And looking in the first paragraph, about the middle of  
25 the first paragraph, you talk about recognizing that there was



## TOMS - CROSS / LITTLE

1 a surprising level of potential reselling revenue. Do you see  
2 that?

3 A. Correct.

4 Q. And you're talking about this hardware stock here that  
5 we've been talking about?

6 A. Correct.

7 Q. And then in the one, two -- third bullet, bottom of the  
8 third bullet, again you're talking about the 10 million of  
9 stock purchase and you say, "This latter point is something we  
10 will look to understand on the analyst call later."

11 That's the analyst call we've been talking about; right?

12 A. Correct.

13 Q. And you say, "We remain unclear why Autonomy's potentially  
14 booking material reselling revenue." Do you see that?

15 A. Yes.

16 Q. And, again, that's a reference to this hardware, the  
17 hardware you've been talking about?

18 A. Correct, yes.

19 Q. And you say that's something you will ask about on the  
20 call and, in fact, you did ask about it on the call; right?

21 A. Correct.

22 Q. And then you also published the note that we talked about  
23 concerning Q4/10 when you said revenue was potentially  
24 flattered by hardware sales; right?

25 A. Yes.

1 Q. So someone looking at your reports would see that at least  
2 you deduced or inferred from public information that Autonomy  
3 had some hardware sales; right?

4 A. Inferred that it was a possibility.

5 Q. Possibility. And if someone were interested in finding  
6 out more about Autonomy's revenue, that could give them a clue  
7 to ask more questions; right?

8 A. Yes.

9 Q. And are you aware that other analysts published notes  
10 stating that they thought Autonomy revenue also included some  
11 hardware?

12 A. I'm not aware of any specific notes that were published.

13 Q. Okay. They're in evidence so I won't burden you with  
14 them.

15 Do you recall giving an interview to the *Guardian* about  
16 Autonomy in the latter part of 2012?

17 A. I do, yes.

18 Q. That was right after HP announced that it was taking a  
19 writedown of its investment in Autonomy?

20 A. Correct.

21 Q. At that time, you told the newspaper that your  
22 relationship with Dr. Lynch had been somewhat fractious over  
23 the years?

24 A. Yes, that's correct.

25 Q. Fractious means not too happy?

**TOMS - CROSS / LITTLE**

1 **A.** At times, yes, correct.

2 **Q.** And you told the newspaper that you thought Autonomy had  
3 pushed the envelope on some things?

4 **A.** Correct.

5 **Q.** But you didn't think anyone at Autonomy had done anything  
6 fraudulent; right? That's what you told them?

7 **A.** Correct.

8 **Q.** You said at that time "I think HP has probably got this  
9 one wrong"?

10 **A.** Correct.

11 **MS. LITTLE:** Nothing further.

12 **THE COURT:** Thank you.

13 Anything further?

14 **MR. REEVES:** Could I have just one second, please.

15 (Government counsel confer off the record.)

16 **MR. REEVES:** Thank you, Your Honor. No. No further  
17 questions.

18 **THE COURT:** Thank you, Mr. Toms. Thank you for  
19 coming. You're excused.

20 Call your next witness?

21 If you want to stand up, ladies and gentlemen. Get a  
22 little stretch before we ...

23 **MR. FRENTZEN:** Your Honor, the Government calls  
24 Special Agent Alexandra Bryant.

25 \\\

**BRYANT - DIRECT / FRENTZEN**

**ALEXANDRA BRYANT,**

called as a witness for the Government, having been duly sworn,  
testified as follows:

**THE WITNESS:** I do.

**THE CLERK:** Thank you. Please be seated.

Please state your full name for the record and spell your  
last name.

**THE WITNESS:** Alexandra Elizabeth Bryant, B-R-Y-A-N-T.

**MR. FRENTZEN:** Proceed, Your Honor?

**THE COURT:** Yes.

**DIRECT EXAMINATION**

**BY MR. FRENTZEN:**

**Q.** Good afternoon, Special Agent Bryant.

**A.** Good afternoon.

**Q.** Can you tell us what you do for a living?

**A.** I'm an agent with the FBI here in San Francisco.

**Q.** How long have you been with the FBI?

**A.** A little over a year.

**Q.** And what's your current assignment?

**A.** I'm assigned to a white collar squad in San Francisco  
since about August of this year -- or 2017.

**Q.** Can you take us back and tell us a little bit about your  
education, please.

**A.** Yes. I have a Bachelor's in statistics and economics from  
the University of Chicago. And then for five and a half years

1 after that, I worked at a financial firm in Chicago. It was a  
2 private asset management firm called Grosvenor Capital  
3 Management. We invested in hedge funds, private equity and  
4 real state, and then I decided to switch careers.

5 **Q.** In your time with the FBI, have you largely been wrapped  
6 up working on this case?

7 **A.** Yes. I was assigned to be the case agent while this case  
8 went to trial. The original investigating agents have gone on  
9 to other opportunities.

10 **Q.** All right. And in the course of the investigation, have  
11 you tried to familiarize yourself with the facts around this  
12 investigation?

13 **A.** Yes. I've been part of many of the trial preparations  
14 with a number of the witnesses and obviously heavily involved  
15 with a lot of the documents we've seen.

16 **Q.** What I'd like to do is to take you to a few documents and  
17 take you through a couple of different areas.

18 One area I'd like to start with is Mr. Hussain's  
19 compensation. Did you look into that area?

20 **A.** Yes, I did.

21 **Q.** And in terms of Mr. Hussain's compensation, can you give  
22 us some idea of the types of documents that were analyzed?

23 **A.** Yes. So Autonomy's annual financial reports include  
24 disclosures about management's essentially salary payments and  
25 options. We also have Mr. Hussain's pay stubs over 2009 to

1 2011 and some options information from HP.

2 Q. You mean like stock options information?

3 A. Yes.

4 MR. FRENTZEN: And, Your Honor, I think -- well, let  
5 me ask a couple of follow-up questions.

6 Q. In terms of the overall -- all the different areas that  
7 you looked into, would you consider that the documents are --  
8 in order to reach a picture of Mr. Hussain's compensation, that  
9 they are voluminous and cannot conveniently be read in court?

10 A. Yes.

11 Q. Were the originals -- in other words, the documents that  
12 you utilized to be able to reach the summary conclusions --  
13 were those documents business records?

14 A. Yes.

15 Q. And were those documents available to both sides?

16 A. Yes.

17 Q. All right.

18 And with that, Your Honor, I'd seek to -- may I have one  
19 moment? I'll just approach and do it this way.

20 Special Agent Bryant, if you could, could you take a look  
21 at -- let's start with Exhibit 2633. Do you have that in front  
22 of you?

23 A. Yes.

24 Q. And if you could -- I'm not going to offer these into  
25 evidence, Your Honor.

1 But, Special Agent Bryant, could you just describe for us  
2 what's 2633?

3 A. These are the pay stubs for Mr. Hussain from 2009 to 2011.

4 Q. And do you have in front of you a file with a document  
5 marked as Exhibit 2645?

6 A. Yes.

7 Q. Okay.

8 And I'm not going to offer this as well, Your Honor.

9 But Special Agent Bryant, 2645, was that a native file?

10 A. Yes. It was a spreadsheet with stock option information  
11 for Autonomy employees.

12 Q. And then you also made reference to annual reports,  
13 those -- 2009-2010, so those are in evidence?

14 A. Yes.

15 Q. And if you could, now, could you take a look at Exhibit  
16 3040.

17 A. Yes.

18 Q. And is 3040 the summary prepared from -- and I should add,  
19 did you also take a look at bank records of Mr. Hussain?

20 A. Yes.

21 Q. Okay. Which we're not going to offer, Your Honor.

22 But is 3040 a summary of the information that you reviewed  
23 in those other locations?

24 A. Yes.

25 THE COURT: Admitted.

1           **MR. FRENTZEN:** Thank you, Your Honor.

2           (Trial Exhibit 3040 received in evidence)

3           **MR. FRENTZEN:** If we could bring up 3040.

4           **MR. KEKER:** I think this is the wrong one. This is  
5 gross proceeds.

6           **THE COURT:** Would you discuss it with Mr. Keker,  
7 Mr. Frentzen.

8           **MR. FRENTZEN:** Maybe you could ask Ms. Little. This  
9 is the one we talked about. Maybe I can confer, Your Honor.

10          **THE COURT:** Yes. Go show them what you're doing here.  
11 (Mr. Frentzen and Defense counsel confer off the record.)

12          **MR. FRENTZEN:** May I have one moment, Your Honor? I  
13 apologize. May I have a moment with the agent?

14          **THE COURT:** Sure.

15 (Mr. Frentzen and Agent Bryant confer off the record.)

16 (Mr. Frentzen and defense counsel confer off the record.)

17          **MR. FRENTZEN:** Sorry, Your Honor. They had an old  
18 version. If we could bring up 3040.

19                   (Exhibit published to jury.)

20 **BY MR. FRENTZEN:**

21 **Q.** All right. Special Agent Bryant, if you could, just take  
22 us through this summary. What are we looking at here?

23 **A.** So this is our calculation of Mr. Hussain's compensation  
24 from 2009 until October 31st, 2011, and we broke it out by the  
25 different parts of his compensation.



1 Q. Okay. And so, for example -- so this is the three years  
2 at issue?

3 A. Yes.

4 Q. Okay.

5 Can we blow this up a little. I'm just going to kind of  
6 move across. That's a little better.

7 All right. So the first column here, Special Agent  
8 Bryant, what is that?

9 A. That's Mr. Hussain's gross annualized salary for each  
10 year.

11 Q. All right. And this is in British pounds?

12 A. Yes.

13 Q. Okay. And what is the next column, Column B?

14 A. Those are his benefits which were described in the annual  
15 report as a car service as well as private healthcare.

16 Q. And then Column C is what?

17 A. An annual bonus he received.

18 Q. It says "prior year bonus." What is meant by that?

19 A. So for example in 2009, £270,000, that was paid out for  
20 his work done in 2008, but it entered his bank account in 2009.

21 Q. And Column D, what is that?

22 A. So that's what Autonomy would have matched, his, like,  
23 retirement contributions.

24 Q. All right. The next column talks about gross proceeds  
25 from exercised options. What does that mean?

1   **A.**    So Mr. Hussain had a number of options with Autonomy. He  
2   would exercise those options at a strike price, which we will  
3   get into in the next column, but that's just the total value of  
4   those options, excluding the strike price. So they totaled to  
5   about £13 million.

6   **Q.**    Okay. And the next column over and -- what is that?

7   **A.**    So we essentially added the previous columns and converted  
8   them into U.S. dollar based on the average exchange rate for  
9   the year. Again, this is his gross proceeds from exercising  
10   his options, so they do not yet include the price of the -- the  
11   strike price, how much it cost for him to exercise those  
12   options.

13   **Q.**    So what do you mean by that?

14   **A.**    So essentially for him to exercise the options, he has  
15   to -- they're at a certain strike price so it might be \$2. If  
16   the stock is worth \$20, the total cost of exercising that  
17   option or the amount he actually gains is 18 because the strike  
18   price was \$2.

19   **Q.**    So this column here that's converted into dollars would be  
20   as if he got everything from the exercising of the options?

21   **A.**    Yes.

22   **Q.**    And that's not how it really works?

23   **A.**    Yes.

24   **Q.**    Okay. So moving on -- but the total figure there, is that  
25   approximately 24 million?

1 A. Yes.

2 Q. Now, in this year here, 2011, in terms of the exercised  
3 options, that's much larger than the two prior years. Do you  
4 know what that's attributable to?

5 A. Yes. When HP acquired Autonomy, they essentially bought  
6 all of Mr. Hussain's options.

7 Q. So that includes, in other words, this -- the 2011 year  
8 includes not just exercising options normally, but also the  
9 purchase by Hewlett-Packard of Autonomy?

10 A. Yes.

11 Q. Okay. All right. And then let's go on.

12 The -- does it then list gain on the sale of exercised  
13 options?

14 A. Yes. So, again, that is now taking into account the  
15 strike price of his options, so this would have been the amount  
16 that he actually received into his bank account.

17 Q. Okay. So then is there -- the next calculation, total  
18 gross annual compensation in pounds?

19 A. Yes. So we're taking his salary, benefits, bonus, pension  
20 and the gain on sale of his options.

21 Q. And did you then convert that into U.S. dollars?

22 A. Yes.

23 Q. And that's that column right there?

24 A. Yes. It's approximately \$15.9 million.

25 Q. That's a combining of the three years?

1 A. Yes.

2 Q. Can you give us the three years: 2009, 2010, 2011?

3 A. Yes. He made approximately \$2.8 million in 2009;  
4 \$2.8 million in 2010; and \$10.2 million in 2011.

5 Q. All right. And then you have the -- an approximate  
6 exchange rate?

7 A. Yes.

8 Q. Great.

9 I would like to move now, Special Agent Bryant, to going  
10 through some emails.

11 Have you reviewed emails -- email communications involving  
12 the defendant, Mr. Hussain?

13 A. Yes.

14 Q. I'd like to start with the topic of hardware.

15 Special Agent Bryant, did you review emails involving  
16 Mr. Hussain that related to hardware and sales of hardware?

17 A. Yes.

18 Q. And you've got in front of you Exhibits 121 -- well, let's  
19 just go through.

20 You can take a look 121 and see if you recognize what that  
21 is?

22 A. Yes. It's an email from Mr. Hussain to Peter Menell.

23 MR. FRENTZEN: Your Honor, I would offer 12 --

24 THE COURT: Admitted.

25 MR. FRENTZEN: Thank you.

1 (Trial Exhibit 121 received in evidence)

2 (Exhibit published to jury.)

3 **MR. FRENTZEN:** Great. Thanks.

4 **Q.** Okay. Can we scroll down briefly just to show -- all  
5 right.

6 So there is an email here. What's the date of the  
7 original email?

8 **A.** June 30th, 2009.

9 **Q.** And from who?

10 **A.** Peter Menell to Sushovan Hussain.

11 **Q.** All right. If we can scroll down and get -- was there  
12 then a response from Mr. Hussain?

13 **A.** Yes.

14 **Q.** Same date?

15 **A.** Yes.

16 **Q.** And what was Mr. Hussain telling Mr. Menell?

17 **A.** "In regards to MS," which over the course of this  
18 investigation I take to mean Morgan Stanley, "we are looking to  
19 supply the Morgan Stanley hardware from the EMC hardware that  
20 we bought. Talk to Sullivan. We have ten minutes."

21 **Q.** And the time, June 30, 2009, is there a time listed there?

22 **A.** Yes. 4:25 p.m.

23 **Q.** Skip a couple of things and move to Exhibit 1301. Do you  
24 have Exhibit 1301 in front of you, Special Agent Bryant?

25 **A.** Yes, I do.

1           **MR. FRENTZEN:** I would offer 1301, Your Honor.

2           **THE COURT:** Admitted.

3           **MR. KEKER:** Okay.

4           (Trial Exhibit 1301 received in evidence)

5           (Exhibit published to jury.)

6           **BY MR. FRENTZEN:**

7           **Q.** Could we go to the bottom. There we go.

8           Does this appear to be an email from Mr. Hussain?

9           **A.** Yes.

10          **Q.** And what's the date on this email?

11          **A.** December 18, 2010.

12          **Q.** And who is it to?

13          **A.** It's to Mr. Scott, Ms. Prentis, Stouffer Egan, Steve  
14 Chamberlain, Jim Krakoski.

15          **Q.** What is it related to?

16          **A.** An "all hands call today."

17          **Q.** And if we could, do you see the portion that I've just  
18 circled on the screen?

19          **A.** Yes.

20          **Q.** What's that a reference to or what does it say? Sorry.

21          **A.** "Joel -- speak to Reagan." I believe, again, this is in  
22 regards to Reagan Smith.

23                 **MR. KEKER:** I object, Your Honor, to her believing  
24 things if she didn't have firsthand knowledge. The jury can  
25 understand this as well as she can.

1           **THE COURT:** You have to lay a foundation. Objection  
2 sustained.

3 **BY MR. FRENTZEN:**

4 **Q.** Are you aware of an individual by the name of Reagan  
5 Smith?

6 **A.** Yes.

7 **Q.** And where did Reagan Smith work?

8 **A.** Bank of America.

9 **Q.** Can we go to the next page. Scroll back up to it.

10 In terms of the email that's here, Special Agent Bryant,  
11 do you see whether or not Mr. Hussain has written a message  
12 here?

13 **A.** Yes, he has.

14 **Q.** Okay. And in here, he's indicated "there is absolutely no  
15 deal in 2011 in the same form." Do you see that?

16 **A.** Yes.

17 **Q.** Moves on to accounting view and discusses the auditors?

18 **A.** Yes.

19 **Q.** If we can now go back up to the first page. Go to the  
20 top. Great. Thank you.

21 Is there then an email from Mr. Hussain?

22 **A.** Yes. To Mr. Lynch. It says, "Please see accounting  
23 reasons. Does it pass your smell test."

24 **Q.** And Mr. Lynch's response in terms of the first line?

25 **A.** "I would avoid using words auditor and audit."

1           **MR. FRENTZEN:** One moment, Your Honor.

2           (Pause in proceedings.)

3           **BY MR. FRENTZEN:**

4           **Q.** Could we go to -- Special Agent Bryant, can you take a  
5 quick look at Exhibit 529, please.

6           **A.** I do not have that one in front of me.

7           **Q.** Is 529 in evidence? If so, I'll skip it.

8           **THE CLERK:** Yes.

9           **THE COURT:** No, it's not -- wait, maybe it is. It's  
10 in evidence.

11           **MR. FRENTZEN:** Thank you, Your Honor. I don't need to  
12 spend time on that.

13           **Q.** I would like to show you some documents, some emails,  
14 Special Agent Bryant, related to Capax.

15           Can you please take a look at Exhibit 62 and see if you  
16 recognize what that is.

17           **A.** It's an email from Steve Chamberlain with a copy to  
18 Mr. Hussain.

19           **THE COURT:** Admitted.

20           (Trial Exhibit 62 received in evidence)

21           (Exhibit published to jury.)

22           **BY MR. FRENTZEN:**

23           **Q.** Can we go to the original email. Do you see -- sorry.  
24 Can you go back down.

25           What's the date of this, Special Agent Bryant?



1 A. May 27th, 2009.

2 Q. And the subject?

3 A. MicroLink and Capax EDD services invoices.

4 Q. All right. And what is indicated is attached to this?

5 A. Purchase orders from MicroLink and Capax.

6 Q. Is there then a discussion about sign-off, if you will?

7 A. Yes.

8 Q. Can we now go to the top of this document, please. And do  
9 you see that this has been forwarded from -- or by

10 Mr. Chamberlain?

11 A. Yes.

12 Q. What's the date?

13 A. May 27th, 2009.

14 Q. All right. And is Mr. Hussain a recipient of this email?

15 A. Yes.

16 Q. And what is Mr. Chamberlain relating? What's he saying?

17 A. You just want me to read it?

18 Q. Sure?

19 A. "These relate to services for EDD provided to Zantaz.

20 Given the amounts, the purchase order should have been approved  
21 by both MRL and SH and also had the approval of Richard Eads.

22 Please confirm. We then need someone from operations to

23 confirm that the service has been provided and the customer is

24 happy. Given amounts this must be Mike Sullivan as CEO of

25 Zantaz."

**BRYANT - DIRECT / FRENTZEN**

1 **Q.** All right. Can you take a look at Exhibit 63, please.

2 **THE COURT:** Admitted.

3 **MR. FRENTZEN:** Thank you, Your Honor.

4 (Trial Exhibit 63 received in evidence)

5 (Exhibit published to jury.)

6 **BY MR. FRENTZEN:**

7 **Q.** If we could go to the very top part. Great.

8 Special Agent Bryant, what's the date on this email?

9 **A.** Again, May 27th, 2009. It's from Mr. Chamberlain replying  
10 to the same email to the same individuals.

11 **Q.** Mr. Hussain was a recipient on this?

12 **A.** Yes.

13 **Q.** And Mr. Chamberlain -- what is he saying in this  
14 particular email?

15 **A.** He goes on to continue "also need to note on the invoice  
16 who end customer was and confirm that we have billed them and  
17 been paid before we make payments."

18 **Q.** Okay. And this is in relation to what?

19 **A.** Again, MicroLink and Capax EDD services invoices.

20 **Q.** Would you take a look -- do you have Exhibit -- sorry --  
21 310 in front of you.

22 **A.** That may be in evidence.

23 **MR. FRENTZEN:** Oh, is 310 in?

24 **THE COURT:** Yes.

25 **MR. FRENTZEN:** I apologize. Okay. We can skip it.

1           **MR. KEKER:** Your Honor, we can stipulate to a lot of  
2 these. We do not have objections to them.

3           **THE COURT:** Go ahead.

4           **MR. FRENTZEN:** I mean, that's nice now, but -- okay.

5           **Q.** Could we take a look at Exhibit 349, Special Agent Bryant.

6           **A.** Yes.

7           **Q.** Do you recognize what that is?

8           **A.** That's --

9           **THE COURT:** Admitted.

10           (Trial Exhibit 349 received in evidence)

11           (Exhibit published to jury.)

12           **THE WITNESS:** An email from Hussain to Phil Smolek.

13           **BY MR. FRENTZEN:**

14           **Q.** What is the date of this email?

15           **A.** December 15, 2009.

16           **Q.** What is the communication from -- I'm sorry. Who is  
17 Mr. Smolek communicating to?

18           **A.** To Mr. Hussain and Andrew Kanter.

19           **Q.** And what is Mr. Smolek saying to them?

20           **A.** He's asking them "to review the below purchase order for  
21 Capax, EDD outsourced services."

22           **Q.** All right. And if you could scroll up a little bit. All  
23 right.

24           What is listed here?

25           **A.** Outsourced specialized EDD services.

1 Q. For a total amount of how much?

2 A. Half a million dollars.

3 Q. Can we go to the bottom. I'm sorry. I meant the top. I  
4 apologize.

5 And did Mr. Hussain respond?

6 A. Yes. He approved it.

7 Q. All right. And in the subject, what is the subject here?

8 A. "Capax purchase order payment request, CFO/COO approval  
9 needed."

10 Q. I want to show you a stack of emails.

11 THE CLERK: A juror needs a break.

12 THE COURT: You need a break? Well, let's see. How  
13 much longer do you have, do you think?

14 MR. FRENTZEN: Total?

15 THE COURT: Yes. More than 15 minutes?

16 MR. FRENTZEN: Yes, Your Honor.

17 THE COURT: Ladies and gentlemen, we are going to take  
18 a recess now for the day. Remember the admonition given to  
19 you: Don't discuss the case, allow anyone to discuss it with  
20 you, form or express any opinion.

21 Just while you are all here -- and I know one of the  
22 jurors has departed -- but let me just tell you the Government  
23 will be resting its case early tomorrow. Defense will proceed.  
24 We believe that the Defense case, all the evidence in the case,  
25 will be received this week. And that would mean next week

1 deliberations, argument and deliberations.

2 So while I'm not promising that, because anything can  
3 happen, for planning purposes, that's what we anticipate. I'll  
4 know a bit better tomorrow whether we can keep that schedule or  
5 not, but my guess is we can. Okay.

6 So you're excused for the day.

7 (Proceedings were heard out of presence of the jury:)

8 **THE COURT:** Shall we take a ten-minute break? We need  
9 to go into a couple things, I think.

10 **MR. FRENTZEN:** I think that's right, Your Honor.  
11 We've got a couple of things we are going to want to raise.

12 **THE COURT:** Let's be in recess for 10 minutes. I'll  
13 come back out.

14 (Recess taken at 3:49 p.m.)

15 (Proceedings resumed at 4:02 p.m.)

16 (Proceedings were heard out of the presence of the jury:)

17 **MR. KEKER:** I have an agenda, Your Honor.

18 **THE COURT:** Is it hidden or do I get to see it?

19 **MR. KEKER:** I mean, if you were interested.

20 **THE COURT:** I am interested.

21 **MR. KEKER:** Yeah, okay. We've got two stipulations  
22 that we need to get in.

23 **THE COURT:** Fine.

24 **MR. KEKER:** We need -- we want to talk about the  
25 Sarin/Gersh problem.

1 We want to talk about Agent Bryant's -- the scope of  
2 Agent Bryant's testimony and how long it's going to take.

3 We have the documents that you asked for in your order  
4 earlier, and I can pass those up.

5 And we also want to know whether or not there's going to  
6 be any more exhibits than the ones we've seen to prepare for  
7 tomorrow.

8 And then the final thing is I told our witnesses to come  
9 at 9:00 o'clock tomorrow, and it sounds like this is going to  
10 go on for quite -- I'd like to get a pretty good idea of when  
11 to tell people they should come.

12 **THE COURT:** Well, I don't know how much -- how much  
13 longer do you have on -- let's do the agent -- how much longer  
14 do you have on the agent?

15 Is she -- by the way, which I think you're entitled to do  
16 and there's a reason to do it, but is she going to do more than  
17 just this document, this document, this document?

18 **MR. FRENTZEN:** Yes, but that's going to be a lot of  
19 it.

20 **THE COURT:** Okay. And is it your view -- I'm trying  
21 to figure out is it your view that it's important to read these  
22 documents to the jury?

23 **MR. FRENTZEN:** Yeah. I mean, if they were admitted  
24 through a stipulation, I would probably read them to them by  
25 showing them and reading it into the record so that they can

1 have them.

2 I don't want to spend --

3 **THE COURT:** I actually don't understand what you said.

4 **MR. FRENTZEN:** Okay.

5 **THE COURT:** In other words, would you -- if it's done  
6 by stipulation, are you satisfied that you can wait until  
7 closing to disclose -- not to enter them but to read it to the  
8 jury?

9 **MR. FRENTZEN:** No.

10 **THE COURT:** You think the jury has to see it tomorrow?

11 **MR. FRENTZEN:** Correct, Your Honor. There's --

12 **THE COURT:** Okay. That's it.

13 **MR. FRENTZEN:** There's a lot here. They're not all  
14 going to blend into the -- I know what the Court is going to  
15 say, "If you're not going to read them in argument, why are you  
16 putting them in?"

17 **THE COURT:** No, I wasn't going to say that.

18 **MR. FRENTZEN:** Oh, all right.

19 **THE COURT:** To the contrary.

20 **MR. FRENTZEN:** Oh.

21 **THE COURT:** I mean --

22 **MR. FRENTZEN:** I've been told that before, that's all.  
23 Not by you.

24 **THE COURT:** By me?

25 **MR. FRENTZEN:** No. No, Your Honor.

1           **THE COURT:** I'm not going to say that because I'm  
2 taking the other tact. I'm not going to say it because I think  
3 that there is a legitimate purpose served by having a document  
4 and reading it to the jury at the time because it makes the  
5 document live, especially even if you don't intend to do it for  
6 your closing. They've heard it. You can remind them of it if  
7 you think it's important, and so forth and so on, but they will  
8 have heard it.

9           Okay. But I'm trying to figure out how long that's going  
10 to take.

11           **MR. FRENTZEN:** I think I've got about an hour, maybe a  
12 little more than an hour.

13           **THE COURT:** Goodness.

14           **MR. FRENTZEN:** Well, just so the Court knows, and  
15 counsel already knows, there's e-mails on some other topics. I  
16 think the Court has seen those. I'm skipping through these.  
17 And then there are -- there's a series of e-mails that I  
18 understand are the objections; but there's a series of e-mails  
19 and documents that lay out basically two discrete deals, and we  
20 can argue about the hearsay whenever we argue about the  
21 hearsay. I don't think they're hearsay documents.

22           And then there's some phone records, and I think that's  
23 about it.

24           **THE COURT:** Okay. Let me go back to the first part.

25           **MR. FRENTZEN:** Sure.



1           **THE COURT:** I just wonder whether -- let's say you had  
2 five e-mails that reflected the defendant's activities with  
3 respect to transaction X. So you say to the agent, "Exhibit  
4 Numbers 1, 2, 3, 4, 5, these are e-mails involving -- that  
5 Mr. Hussain received. Do they set forth -- do they -- do they  
6 reflect Mr. Hussain's conduct with respect to that  
7 transaction?" Something like that.

8           No, you don't want that.

9           **MR. KEKER:** No. We'll cross -- boy, would we -- ask  
10 her. Do that and see what happens. There are going to be a  
11 lot "Do they reflect Mr. Hussain's conduct towards that  
12 transaction?" Let's get into that.

13           **THE COURT:** Okay. And what about all the other  
14 exhibits?

15           **MR. FRENTZEN:** I do not fear that, but that's okay.

16           **MR. KEKER:** Okay. He doesn't fear --

17           **MR. FRENTZEN:** I don't have to do that.

18           **MR. KEKER:** -- but that's what we would do.

19           **THE COURT:** Mr. Keker, do you want to know the quality  
20 you both share in common?

21           **MR. KEKER:** I think I know it.

22           **THE COURT:** Do you know what it is?

23           **MR. FRENTZEN:** No one likes us.

24           **THE COURT:** Fearlessness.

25           Oh, no, I like both of you.

1 It's fearlessness. The face of whatever it is, it's  
2 fearlessness. You can call it courage or you can call it a  
3 lack of reality, but one or the other, it's fearlessness.

4 Okay. Look, I'm not going to tell you how to do it. You  
5 do it the way you want to do it; and if it takes an hour, it  
6 takes an hour. Listen, in a case that's gone on three months,  
7 that's one hour, but just tell Mr. Keker, you know, when you  
8 expect -- that his witnesses need not be here till 10:00 or  
9 10:30, or something like that, but we'll get to his witnesses  
10 because I think we have to talk about it.

11 Let's finish up with the agent. What do you see  
12 objectionable? I guess I have to ask Mr. Keker. What do you  
13 have that you object to in her presentation?

14 **MR. KEKER:** There are one, two, three, four, five,  
15 six, seven, eight e-mails that we object to.

16 **THE COURT:** Okay. Do you have the number? Are there  
17 exhibit numbers?

18 **MR. KEKER:** Yes. 425.

19 **THE COURT:** 425.

20 **MR. KEKER:** 495.

21 **THE COURT:** 495.

22 **MR. KEKER:** 496.

23 **THE COURT:** 496.

24 **MR. KEKER:** 500, 731, 732, 736, and 2788.

25 And we have two objections. One is hearsay, but the other

1 is --

2 **THE COURT:** 2788?

3 **MR. KEKER:** Yes, sir.

4 **THE COURT:** Okay.

5 **MR. KEKER:** -- and the other is that these are about  
6 two transactions Poste Italiane and Auxilium that the jury has  
7 heard almost nothing about, and what they're doing -- I mean,  
8 this is basically sort of a data dump at the end of the case  
9 about another transaction that the jury knows nothing about.

10 And why -- and so what we would also say is that this is  
11 evidence that's cumulative. Lord knows we've have got enough  
12 transactions now to argue to the jury. They don't need another  
13 one that they never had a sponsoring witness about. We don't  
14 have anybody that we can cross-examine about this, and they're  
15 trying to get in documents between people that even they don't  
16 allege are co-conspirators.

17 Anyway, we object to all of those.

18 **THE COURT:** Okay. So 425 --

19 **MR. KEKER:** It's between Broli -- someone named  
20 Corrado Broli and Julie Dolan. Julie Dolan is a lawyer in --

21 **THE COURT:** What does it relate to?

22 **MR. FRENTZEN:** This relates --

23 **THE COURT:** Why is it being offered?

24 **MR. FRENTZEN:** These relate, Your Honor, to the  
25 Poste Italiane and Auxilium deals which stem basically from the

1 Vatican. These are very significant because what they are is  
2 they are backdated deals that go nowhere, that Sushovan Hussain  
3 attributes to the Vatican and then finds some Italian resellers  
4 to basically shove the deals through to try to get another  
5 couple million after the quarter has already closed.

6 Now, there --

7 **THE COURT:** There was testimony.

8 **MR. FRENTZEN:** Correct.

9 **THE COURT:** I recall testimony on that.

10 **MR. FRENTZEN:** There is. And there was testimony --  
11 Corrado Broli, I mean, it's nice to act like you don't know who  
12 it is, but he worked for the defendant and he was a salesman  
13 for Autonomy, and he still works for Mike Lynch today.

14 **THE COURT:** That transaction is admitted.

15 **MR. FRENTZEN:** Thank you, Your Honor.

16 **THE COURT:** Okay. What's the next different  
17 transaction?

18 **MR. KEKER:** Poste Italiane. His argument is going to  
19 be the same. All right.

20 **THE COURT:** Okay. So that's admitted too. Okay.

21 **MR. FRENTZEN:** Great.

22 **THE COURT:** However, there's more. Mr. Keker -- or is  
23 that -- that takes care of all the ones you've numbered?

24 **MR. KEKER:** Yes.

25 **THE COURT:** Okay. So they're in.

1 All right. What's next?

2 MR. FRENTZEN: I don't think there's anything else  
3 from the agent.

4 THE COURT: So other than that, there's no dispute as  
5 to what she's going to testify to. We've dealt with her now.

6 MR. KEKER: Well, if --

7 MR. FRENTZEN: I think so.

8 THE COURT: We've dealt with the agent. I don't want  
9 to --

10 MR. FRENTZEN: There's the top 40 list, Your Honor,  
11 but we've already talked about that and I think I'll lay a  
12 similar foundation.

13 THE COURT: Yeah, you have to lay a foundation.

14 MR. FRENTZEN: Yeah. Yes. Yes, Your Honor.

15 THE COURT: You should look at 1006 carefully. I'm  
16 sure you have studied it carefully.

17 MR. FRENTZEN: Voluminous and inconvenient and --

18 THE COURT: Well, it's more than that. It's more than  
19 that. I've been sitting here reading about it. It's all sorts  
20 of things.

21 Look at Weinstein. Look at Weinstein, and I don't mean --

22 MR. FRENTZEN: I was about to say I thought he was --

23 MR. KEKER: Not Danny, Judge Weinstein.

24 THE COURT: Well, other Judge Weinstein.

25 MR. KEKER: The one who knows something about

1 evidence.

2 Can I hand up this? These are the documents you asked  
3 for.

4 **THE COURT:** Yes.

5 **MR. KEKER:** They're the exhibit numbers.

6 **THE COURT:** Yeah, okay. Wait. So we're now --

7 **MR. KEKER:** We're going to file them.

8 **THE COURT:** -- basically finished on the agent.

9 **MR. FRENTZEN:** Yes, Your Honor.

10 And there's just one other issue that I think before we  
11 close -- we can close out our case. We can take this up later  
12 at some other point. I think we're going to ask for judicial  
13 notice from the Court on a couple of matters, and we'll provide  
14 those to the Court.

15 **MR. KEKER:** Could we --

16 **THE COURT:** There's a whole -- I mean, I don't know  
17 whether we're talking about foreign law or we're talking about  
18 standards or are we talking about --

19 **MR. FRENTZEN:** Standards.

20 **THE COURT:** Well, there's a whole process for judicial  
21 notice.

22 **MR. FRENTZEN:** Right.

23 **THE COURT:** And I trust -- and the answer is you have  
24 to follow the process. So you either followed the process or  
25 you haven't followed the process, but I'm not on the last day

1 of the trial for the Government's case going to excuse the  
2 Government from following the process.

3 **MR. KEKER:** And I will object. I mean, what we don't  
4 want to do is start a Defense case until the Government has  
5 rested, and that means put in whatever they think they can put  
6 in or try to put in whatever they try to put in.

7 **MR. FRENTZEN:** That's why I brought it up.

8 **MR. KEKER:** So what is it? I mean, let's --

9 **MR. FRENTZEN:** SOP 97-2. Tomorrow I intend to put in  
10 at least two or three more statements by the defendant that he  
11 and Autonomy followed SOP 97-2 of U.S. GAAP.

12 **THE COURT:** So you're going -- your intention is to  
13 have the Court take judicial notice of SOP --

14 **MR. FRENTZEN:** 97-2, Your Honor.

15 **THE COURT:** -- 97-2.

16 **MR. FRENTZEN:** From U.S. GAAP, which the defendant  
17 repeatedly told people is what Autonomy was following as its  
18 accounting standard for revenue recognition.

19 **MR. KEKER:** And we object to that unless we have a  
20 foundation witness that can put it in so that we can  
21 cross-examine him on what it means and what it is. Just sort  
22 of flinging that in, it's an incredibly complicated situation.

23 **THE COURT:** Well, it may or may not be.

24 **MR. KEKER:** It is.

25 **THE COURT:** Well, okay. I'm sure you're right. I'm

1 sure it is complicated, but I'm not -- I haven't even reached  
2 the complication of it.

3 I'm being asked to take judicial notice of something.  
4 SOP. Okay. Everybody knows what we're talking about, SOP.

5 Can I take judicial notice? And the code rules say here's  
6 how you take judicial notice. If you've done that, it comes  
7 in, as complicated as it may be. If you haven't done it, then  
8 it doesn't come in.

9 **MR. KEKER:** Your Honor, not necessarily. Judicial  
10 notice shouldn't be taken of something that will -- that is  
11 complicated and the jury has no opportunity to learn about.  
12 It's not -- it's something -- SOP 97-2 is something that  
13 accountants spend a lot of time working on and thinking about.  
14 It's not something that's obvious. This is like throwing in  
15 the first law of thermodynamics as judicial notice in a case  
16 where it matters. You need to explain it. Somebody's got to  
17 be there to be cross-examined or --

18 **THE COURT:** I don't know whether that's true or not.  
19 What is the -- what is that section that deals with  
20 judicial notice?

21 **MR. FRENTZEN:** I think it's the 200 series of Federal  
22 Rules of Evidence, Your Honor. Like 201 or something, if  
23 memory serves.

24 **MR. LEACH:** 201.

25 **MR. FRENTZEN:** 201, hey.



1           **THE COURT:** 201. Okay. Let me look at it. Why don't  
2 we all look at it? I'd rather do this now because this is dead  
3 time and I don't have somebody sitting in the backroom waiting  
4 to go ahead.

5                               (Pause in proceedings.)

6           **MR. KEKER:** First of all, it's not a fact. It's far  
7 from a fact.

8           **THE COURT:** Well, the fact is it exists. I mean, I  
9 don't know whether they --

10          **MR. KEKER:** I agree that that's a fact, but what it  
11 deals with, the subject matter of it is not a fact. It's an  
12 interpretive rule.

13          I mean, we can put --

14          **THE COURT:** I'm trying to think of an analogy.

15          **MR. KEKER:** An analogy is we'll put in IAS 18, IAS 35,  
16 IFRS 8, and so on, and the jury will have all these. With  
17 nobody to educate them, they'll get the accountant -- what a  
18 fifth year accountant would still find puzzling, and they'll  
19 have that in the jury room and they'll get to decide what the  
20 accounting standards are. No.

21          **MR. FRENTZEN:** We charged fraud. Part of the defense,  
22 as I understand it, is, "Oh, no, this is all great under IFRS  
23 and it would not be okay under U.S. GAAP."

24          We just want to put in now that we've learned that the  
25 defendant was repeatedly telling investors, the public --

1 Gersh? -- anyway, was telling everybody that he followed --  
2 including publicly on the website and referring people to the  
3 website -- that he followed U.S. GAAP, then I just don't want  
4 an argument that strays from what U.S. GAAP and SOP 97-2  
5 actually say.

6 **MR. KEKER:** First of all, that's not what he said. He  
7 talks about VSOE. Does anybody in this courtroom know what  
8 VSOE is other than Mr. Leach? I bet Mr. Leach --

9 **MR. FRENTZEN:** I've been reading about it.

10 **MR. KEKER:** And I'm quite sure Mr. Frentzen doesn't  
11 know about it.

12 But, in any event, the VSOE is this -- anyway, it's not --  
13 what he said was that "We follow" -- the times that I can  
14 remember -- "We volume VSOE."

15 **MR. FRENTZEN:** Wrong. Dead wrong. I can show it to  
16 him right now.

17 **MR. KEKER:** Okay. Show it. Right now.

18 **MR. FRENTZEN:** All right. Have you read what Special  
19 Agent Bryant is going to introduce into evidence?

20 (Pause in proceedings.)

21 **MR. FRENTZEN:** I may need my notes. I mean, we've  
22 already seen on the website, we've already seen him refer  
23 people to the website.

24 And give me one second and I will show it to you in black  
25 and white. I thought I had it right at hand. One moment,

1 Your Honor.

2 (Pause in proceedings.)

3 **MR. KEKER:** Okay. That's my point. "We adopt a  
4 general SOP 97-2 guidelines." That's not saying "We follow  
5 U.S. GAAP."

6 **MR. FRENTZEN:** 97-2 is from U.S. GAAP.

7 **MR. KEKER:** The general SOP 97-2 guidelines, what are  
8 they?

9 **MR. FRENTZEN:** Those are the guidelines as to software  
10 that come from GAAP, U.S. GAAP.

11 **THE COURT:** How do we know that?

12 **MR. FRENTZEN:** I've been reading about it.

13 **THE COURT:** Oh, okay. Well, why don't we have  
14 Mr. Leach testify in this case because he's the only one who  
15 understands this.

16 **MR. LEACH:** I'm not going to testify, Your Honor, but  
17 I'll just read from Exhibit 630, which is in evidence, where  
18 Autonomy --

19 **THE COURT:** Okay. What does it say?

20 **MR. LEACH:** (reading)

21 "For revenue recognition we voluntarily adhere to the  
22 principles set out in U.S. GAAP, SOP 97-2, which is far  
23 more detailed, prescriptive, and conservative than IFRS."

24 **THE COURT:** Stop there. Let me just think about that,  
25 why you then need anything else after that statement.

1           So you say -- you get up in argument and you say, "This is  
2   what they" -- wait -- "Regardless of what they could have done  
3   or should have -- what they could have done, they represented  
4   to the public this is what they did."

5           Now, have you had -- are you satisfied, is the Government  
6   satisfied that they've had witnesses come in and say, "If you  
7   apply this standard, you have to restate these -- what the  
8   defendant did is inconsistent with the standards that have  
9   been -- that they say they apply"?

10          **MR. LEACH:** I can't recall which witnesses said that,  
11   but the Defense counsel have said that. The Defense counsel  
12   has said that these were not right under U.S. GAAP.

13          **THE COURT:** I don't know. Ultimately I don't know  
14   what he's going to argue. You're anticipating that he's going  
15   to argue that -- you're anticipating that he's going to argue  
16   that the standards that the defendant applied were -- his  
17   conduct was consistent with those standards.

18          **MR. FRENTZEN:** The difficult -- the sole difficulty,  
19   Your Honor, is that we have -- we have called witnesses about  
20   IFRS. We have called witnesses who said this is inappropriate  
21   under IFRS. The Defense has said -- has challenged that, of  
22   course, as a factual matter.

23          Implicit in their questions has been that it would not be  
24   appropriate under U.S. GAAP but that it was appropriate under  
25   IFRS. That's implicit in their questions.

1 I don't know where they're going in their argument, and  
2 that's why if they were to retreat into U.S. GAAP and say, "But  
3 nobody knows anything about U.S. GAAP from this trial," I would  
4 want a backstop because I think from 97-2 you can tell that  
5 these kinds of reseller deals, implicit in their questioning --  
6 I think maybe they'd concede this and then we don't need  
7 judicial notice of anything -- would be that this was not  
8 appropriate under U.S. GAAP; but I don't want to be accused of  
9 not having given the jurors any basis to understand what 97-2  
10 and U.S. GAAP provide for, if that makes sense.

11 **MR. KEKER:** And we would welcome -- if they want to  
12 bring a witness to come in and say what 97-2 says and is about  
13 and we can cross-examine that witness and get into it and get  
14 into the ambiguities, bring it on; but asking for judicial  
15 notice of something that is not a fact and leaving that to the  
16 jury is improper under the rule because it's not a fact and  
17 raises 403 issues.

18 I mean, this is a lot --

19 **THE COURT:** Here is the problem I have: The problem I  
20 have is that there's just no way this jury can figure out  
21 whether the conduct that occurred in this case followed this  
22 GAAP or didn't -- followed this set of instructions or that set  
23 of instructions. I mean, after all, it's extraordinarily -- it  
24 is complicated.

25 Now, you've had witnesses who've come in and said, "You

1 apply this set of standards. They didn't do it. They didn't  
2 do it." So the question is: Is it an issue of fact as to what  
3 standards they followed, or is it an issue of fact of whether  
4 it is" -- it is certainly an issue of fact of whether they  
5 committed fraud.

6 And I guess as part of that the Government argues that the  
7 fraud that occurred was to say "We followed standards A" and,  
8 in fact, they didn't, and that's an act that was misleading.  
9 That's what some of this is about.

10 So the Government comes in and says, "Now we want to  
11 show -- we want you to take judicial notice of what the  
12 standard is" so that it's introduced in evidence; right? So  
13 you have the whole thing in evidence.

14 **MR. FRENTZEN:** Right. It gives us a backstop from an  
15 argument.

16 So they come in and their defense is IFRS --

17 **THE COURT:** Exactly.

18 **MR. FRENTZEN:** -- and our contention is --

19 **THE COURT:** Do you have some standards you want  
20 introduced? Maybe that's it. Maybe I just take judicial  
21 notice saying "GAAP Standard Number 6 is the following and it's  
22 attached to the document."

23 **MR. KEKER:** The fact --

24 **THE COURT:** "Whatever the standard is is the  
25 following."

1           **MR. KEKER:** They need a sponsoring witness who can be  
2 cross-examined. It is not a fact. What that rule says and  
3 means and how it's interpreted is something that accountants go  
4 to school for for a long time and have to get certified on.  
5 You have to take a test to understand what that rule means.  
6 This is not something --

7           **THE COURT:** That's true.

8           **MR. KEKER:** -- that can be dropped into the middle of  
9 a trial without the ability to cross-examine somebody.

10          If they want to call somebody, and they have plenty -- get  
11 Hewlett Packard. We'll get them a thousand accountants in  
12 about two minutes. Put somebody on the stand and let them try  
13 to explain what that rule means and we'll cross-examine.

14           **MR. FRENTZEN:** I don't think that's required. I think  
15 the jury is perfectly capable of --

16           **THE COURT:** There's another way of dealing with it --

17           **MR. FRENTZEN:** What's that?

18           **THE COURT:** -- which is asking the Defense if they  
19 argue that U.S. GAAP didn't apply -- what would be the  
20 argument? That U.S. --

21           **MR. KEKER:** IFRS applies and what we've been talking  
22 about is the sell-in versus sell-through, which seems to us to  
23 be undisputed as a difference between U.S. GAAP and IFRS.

24           **MR. FRENTZEN:** He keeps arguing that.

25           **THE COURT:** Are you calling a witness on that issue?

1           **MR. KEKER:** Pardon?

2           **THE COURT:** Are you calling a witness on that issue?

3           **MR. KEKER:** We'll see.

4           **THE COURT:** Well, wait a minute.

5           **MR. KEKER:** No, no. We'll see in terms of the  
6 witnesses that we're planning to call, and maybe we will call  
7 somebody. If we get judicial notice of this, maybe we'll have  
8 to get somebody to come in and talk.

9           **THE COURT:** No, I'm not asking that. I understand --  
10 I understand your argument about judicial notice, but I go back  
11 to trying to figure out: Well, are you going to argue it?  
12 Because if you're going to argue it, then maybe I let the  
13 Government bring in in rebuttal an expert who says "This is  
14 what the standards are in A and this is what the standards are  
15 in B."

16           I mean, I think you have to elect, you don't have to do it  
17 right this minute, but I think you have to elect how you're  
18 going argue it. If you're going to argue -- if you're going to  
19 argue that these standards whatever it is works a particular  
20 way, the Government gets to bring in a witness to say it's not  
21 even if you don't do anything in your case.

22           In other words, I'm saying to you if you make the  
23 argument, if you're going to make the argument -- because  
24 you're either going to make the argument, which maybe you can  
25 do, I'm not foreclosing you from making the argument, but I



1 want to know before the end of evidence in this case because I  
2 want to give the Government the opportunity if you are going to  
3 make that argument to call that witness.

4 I think you're right. I think it shouldn't be dumped in.  
5 That part I agree with.

6 **MR. KEKER:** They should call a witness.

7 **THE COURT:** Yeah, they can call a witness.

8 Now, you have to make an election. Are you going to argue  
9 the way that Mr. Frentzen anticipates you might argue? If the  
10 answer is yes, I'll let them call a witness; and if the answer  
11 is no, you won't argue that way and they won't call in the  
12 witness and I won't grant judicial notice.

13 **MR. KEKER:** We will -- we will point out and argue  
14 that both the KPMG due diligence report made it crystal clear  
15 that the difference between IFRS, which is what the accounting  
16 rules were that applied to these accounts, and U.S. GAAP is the  
17 difference between sell-in -- one difference is sell-in versus  
18 sell-through. We are going to argue that.

19 We've got that all over the record. That's what Deloitte  
20 thought, that sell-in versus sell-through is okay. That's  
21 how -- that's the standard they applied to these accounts. We  
22 will be arguing that.

23 If they want to say that that's not the standard under  
24 IFRS, if they want to say that the KPMG report is wrong or that  
25 Deloitte is wrong about that, then they ought to call a witness

1 to say why they're wrong and we ought to cross-examine them.

2 **THE COURT:** Well, okay. They're going to make that  
3 argument. You have to decide what you want to do. I don't  
4 think I can --

5 **MR. FRENTZEN:** I don't --

6 **THE COURT:** I agree with Mr. Keker is I can't dump  
7 these standards into the case for the jury to sit there without  
8 a witness, without an explanation, and plow their way through  
9 Accounting 101A.

10 **MR. KEKER:** Although it would be fun to cross-examine  
11 Mr. Leach if he chose to testify.

12 **THE COURT:** He's very good.

13 **MR. KEKER:** He's very good. He'd be better than  
14 anybody they could find, but we'll oppose it because he'd be so  
15 good.

16 **THE COURT:** So think about how you want to deal with  
17 this, all right? Think about how you want to deal, and I'll  
18 let you do it when you need to do it. I mean, I'm not going to  
19 force you to do it at 9:00 o'clock tomorrow morning, you know.

20 **MR. FRENTZEN:** Thank you, Your Honor.

21 **MR. KEKER:** But could we get some notice so that we  
22 can tell our -- we're about to call --

23 **THE COURT:** We're going to go ahead now and discuss --

24 **MR. FRENTZEN:** Depending on who they call, we may be  
25 able to get it tomorrow through their witness --

1           **THE COURT:** Well, I want to talk about it.

2           **MR. FRENTZEN:** -- but we'll see.

3           **THE COURT:** I want to talk about that.

4           **MR. KEKER:** We're calling Ms. Lesjak first.

5       Ms. Lesjak is the CFO of Hewlett Packard.

6           **MR. FRENTZEN:** She might know something about it.

7           **MR. KEKER:** I bet she does know something about it. I  
8       know she knows something about it.

9           **MR. FRENTZEN:** Great.

10          **THE COURT:** Perfect.

11          **MR. KEKER:** Problem solved.

12          **THE COURT:** Well, let's not go that far.

13        Okay. So that -- maybe it's solved. I mean, that's sort  
14       of the way I'd like to deal with it.

15        Okay. Now, turning to one of the things that keeps coming  
16       up is to what extent you can introduce evidence in your case on  
17       hardware sales and what does it mean because this is the Gersh  
18       stuff. This is when did Hewlett Packard know about hardware  
19       sales.

20        And I sort of spin it out because I think what you're  
21       saying is they knew about the hardware -- I'll put it -- I'll  
22       use those words because I think they mean very different  
23       things. There's no question they knew there were hardware  
24       sales. The question is: Did they know the nature of the  
25       hardware sales and the volume of the hardware sales? That, I

1 think, is the issue.

2 Nobody here denies that they -- I mean, the Government  
3 doesn't take a position they didn't know anything about  
4 hardware sales. They had no idea of the magnitude of the kind  
5 of hardware sales that took place, and that's the argument.  
6 It's an underpinning of their case because they argue from that  
7 as a springboard since it was a major component, it was  
8 significant because, in fact, it has a different kind of return  
9 than software sales; and, therefore, you would look at a  
10 company differently because they would be not, quote, "pure  
11 hardware" but they -- "pure software" but that they would  
12 involve this other element.

13 So that's the argument, as I understand it. And I  
14 understand your proposal, because I've read some of the things  
15 that you've written, is: Look, you want to introduce some  
16 evidence of what happened after October 13th because it will  
17 show that the nature of the hardware sales became known to them  
18 and they did nothing about it. They didn't throw up their  
19 hands.

20 **MR. KEKER:** They never cared about hardware sales  
21 until they decided a year later that "What we need to do is  
22 come up with some theory of fraud to get ourselves out of  
23 this."

24 They didn't care about it before when Mr. Hussain told  
25 Mr. Gersh "We sell hardware for convenience" during the due

1 diligence. That was testimony in this case.

2 They didn't care about it when they read analyst reports  
3 like Mr. Toms. I don't care if Mr. Toms said, "Potentially  
4 you're flat." There were all these analyst reports that said  
5 hardware, hardware, hardware.

6 They never asked the question and the reason is very  
7 simple. They didn't care. Mr. Robison had this huge vision  
8 "We're going to transform the world." He didn't care about it.  
9 He said, "Oh, I think it's 5 to 7 percent. Who cares?"

10 They didn't ask anything about the appliances. They  
11 didn't ask anything basically because they didn't care, and the  
12 way we proved they didn't care is the way they acted before and  
13 during due diligence not asking questions when it's right in  
14 front of them, "Ask this question. Here's a hardware and  
15 software contract." They said, "No, we're not going to ask  
16 it."

17 And then we -- and then after when Ms. Lesjak in November  
18 gets an Ernst & Young thing that shows this company has  
19 11 percent --

20 **THE COURT:** Now, here's the problem that I see with it  
21 because I think there's a big difference between before and  
22 after, and all the evidence of before is in. So, I mean,  
23 everything that you said up to what the witnesses have said,  
24 what they knew, what they talked about, and so forth, it's all  
25 there all to be argued.

1 Now you turn to a different aspect of it, which is: How  
2 did Hewlett Packard react when it was clear the nature of the  
3 hardware sales? And you say, you say "They didn't cry fraud or  
4 react to it in any particular way, and so forth, because -- and  
5 that shows they didn't care."

6 The problem I have with that is it doesn't necessarily --  
7 it may show they didn't care, but the problem is whether it  
8 does show or not is in the context of everything that was going  
9 on in that time.

10 For example, they get some indication that -- they get an  
11 indication that hardware sales occur, which would affect -- and  
12 maybe they knew at the time \$100 million or whatever it is,  
13 whatever date they would have done it. So you say, "Well, why  
14 didn't they at that point restate? Why didn't at that point  
15 they impair?"

16 Their answer to that is: "Look, before we start to do  
17 something like that, we're a public company; and before we  
18 start to disparage," if that's the right word, "our  
19 acquisition, we have to be very sure of our facts and how it  
20 plays. And the reason we have to be very sure is we are a  
21 public company and if we operate under a -- if we announce  
22 we're now suspicious or we're now a little uneasy with this  
23 acquisition to the shareholders, that would be dynamite on the  
24 market." The stock would plummet and maybe it should, maybe it  
25 shouldn't. I don't know. I'm not here to save Hewlett

1 Packard, for God's sake, but it's a very difficult -- it's a  
2 whole set of considerations what happens after the fact.

3 For example, they may think, "Those hardware sales were  
4 material, but you know what? Let's see if we can work around  
5 it. Let's try this. Let's try that." Before they throw out  
6 the baby, they want to make sure it's basically not even on  
7 life support. They want to make sure that their actions -- and  
8 I don't know whether they did it or not.

9 By the way, I'm just simply surmising.

10 **MR. KEKER:** I think we have a fact for you because you  
11 are surmising.

12 In January they got -- Ms. Lesjak -- they got Economic  
13 Partners to analyze the whole situation and to value the  
14 acquisition. Economic Partners undeniably had the trial  
15 balances, which included the hardware sales, more than  
16 \$100 million worth of hardware sales.

17 They did their analysis and their analysis was "This  
18 acquisition is worth more than what we paid for it. It's more  
19 than \$11 billion."

20 Now --

21 **MR. LEACH:** He's talking about a witness they're not  
22 even calling from Economic Partners, Your Honor, and it's a tax  
23 valuation. It's apples and oranges, and it's very confusing.  
24 If you think all of this IFRS interpretation is --

25 **THE COURT:** Well, no, you don't have to go there. I

1 mean, I don't know that I would -- I mean, I was sort of  
2 working my way into these documents that they want to introduce  
3 because I have some concerns about all these documents.

4 The concerns I have is that while I'm not saying it's  
5 totally irrelevant, I'm saying that I think under -- that it  
6 introduces all sorts of things that happened subsequent to  
7 October 13th, which to me explain as to why they didn't do what  
8 they didn't do would require a number of witnesses to come in  
9 and explain the market, the integration, the complexity of  
10 where they were at that given time.

11 And the problem you always have and I always have with  
12 securities cases, it freezes the moment. It freezes the  
13 moment, which is okay, but when you go the moment plus 10 or  
14 the moment plus a year, a hundred different variables are at  
15 play, and it's wrong to say, "Ah, look at those -- look at  
16 that. They didn't do that a year afterwards," and that may or  
17 may not be -- may or may not have an independent business  
18 judgment that actually could or could not be justified, but in  
19 their mind was operative that would allow it.

20 So I think it's exactly the sort of thing that 406 -- I do  
21 get that right? 403 --

22 **MR. LEACH:** 403.

23 **MR. KEKER:** 403.

24 **THE COURT:** -- 403 is geared to do, which is post  
25 events can come in, provided they really don't open the door to



1 all sorts of collateral issues. I think this is exactly the  
2 kind of collateral issue that would be introduced.

3 **MR. KEKER:** And our position is, Your Honor, that  
4 based on your ruling about the restatement, you have opened  
5 that door. We're not planning to do it with a lot of  
6 witnesses. We're planning to do it with Ms. Lesjak. We're not  
7 going to call a thousand witnesses.

8 **THE COURT:** No, I know you're not --

9 **MR. KEKER:** But you said when we filed that -- that  
10 proffer and we said these are the things that we want to get  
11 into, you said well, if I -- if -- if the restatement guy comes  
12 up and testifies, then these are clearly admissible, this kind  
13 of thing that goes to show why HP -- I mean, you saw him.  
14 He -- he is an HP --

15 **THE COURT:** He is what he is.

16 **MR. KEKER:** He is what he is, and he's working on the  
17 civil case and all that kind of stuff.

18 **THE COURT:** All of which you can argue.

19 **MR. KEKER:** Okay. But what we need to be able to  
20 argue is that this didn't start -- I mean, you're speculating  
21 about a lot of things.

22 **THE COURT:** No. I'm only saying --

23 **MR. KEKER:** Ms. Lesjak learned about it, then they do  
24 the economic partners thing, then they write -- then they  
25 decide to write off EDS in the summer. They don't write off

1 this investment. They write off 8 billion dollars on EDS, and  
2 then later Ms. Whitman -- I mean, we need to be able to get  
3 into those facts in order to put the restatement into proper  
4 perspective.

5 **THE COURT:** I don't think so. To tell you the truth,  
6 I don't think so. I don't understand the nexus between the  
7 two. I understand that their conduct -- you know, they acted a  
8 particular way. I understand that. But they acted a  
9 particular way -- you say they acted that particular way  
10 because they didn't care about the hardware. They come back --  
11 and I don't think I'm speculating because we know what happened  
12 ultimately.

13 I mean -- but be that as it may, they came --  
14 Hewlett-Packard would come in and say well, they're -- look, we  
15 wanted to do A, we wanted to do B, we wanted to do C. There  
16 has to be some series -- maybe I'm speculating on this --  
17 series of explanations of how Hewlett-Packard moved day by day  
18 by day by day, month by month, quarter by quarter.

19 The problem you had was -- and why the restatement is  
20 particularly permissible, number one, under *Jasper* I think it  
21 is, but, number two, is that he had a statutory duty to take  
22 action with respect to these things.

23 And, by the way, I think -- and maybe I'm guessing, that  
24 statutory duty may be -- may be independent of whether they  
25 cared or not. Let's say they said we're rolling in dough.

1 What difference does it make whether this was going to cost 11  
2 billion, you know. I don't care. Doesn't make any difference  
3 to me.

4 By the way, if they said that, that was their motivation,  
5 fine. But the fact is that the restatement had to come in  
6 because of the investors, because of the public, because of  
7 what they thought the -- the value of the company was at that  
8 time.

9 So I think it is out, and I wanted to address that because  
10 I think that's what you're planning on putting in. If you want  
11 to make a detailed offer of proof -- I think it's detailed  
12 enough, but I'm certainly going to allow you to make your  
13 record on it. You want to attach exhibits and so forth that  
14 you would -- that you would submit on that issue --

15 **MR. KEKER:** We just submitted a lot of them --

16 **THE COURT:** I think they ought to be submitted as  
17 exhibits in part of your offer of proof.

18 **MR. KEKER:** Your Honor, then -- okay. As a lesser  
19 position, we ought to at least be able to show what happened  
20 immediately after the acquisition. The acquisition closed,  
21 full access to the books, report to the CFO in November. EY  
22 does an audit and looks at the Deloitte work papers, looks at  
23 everything, and comes in and tells the CFO about 11 percent of  
24 the revenue being hardware sales. We ought to at least be able  
25 to do that. That happens -- that happens by middle of

1 November.

2 **THE COURT:** What is your response to that?

3 **MR. LEACH:** I don't see why that's the case,  
4 Your Honor. I expect Ms. Lesjak to say -- I don't think  
5 Ms. Lesjak is going to say she learned of what was in the  
6 Deloitte audit papers, and I think they'll say at the time just  
7 looking from the raw document you can't tell all the problems  
8 that emerge in May and subsequent to May of 2012.

9 Ms. Lesjak is not going to say she didn't care about the  
10 hardware sales. She's not going to say it was immaterial.  
11 This is a way to say that the dog didn't bark because somebody  
12 who's running a hundred million dollar organization is shown a  
13 PowerPoint with a particular number and, for a host of reasons,  
14 doesn't move immediately. Nothing more than that.

15 I don't see its probative value. It opens up a number of  
16 issues, as the Court has identified, and I don't see how it's  
17 different from any of the other types of evidence that  
18 they're --

19 **MR. KEKER:** Let me say how it's different. The fact  
20 that -- one of our positions is that hardware should have been  
21 pretty obvious to anybody checking it out. The fact that  
22 immediately after the transaction that it was so obvious and  
23 that it was just there for everybody to see suggests an  
24 argument that a reasonable jury could think is how in the world  
25 could Mr. Hussain have had some kind of criminal intent with

1 respect to hardware when it was so obvious. As soon as the  
2 stuff gets turned over, everybody's going to know every detail  
3 about the hardware, and they did.

4 **THE COURT:** By the way, do you feel you can't argue  
5 that now based upon the record? Because I think you could.

6 **MR. KEKER:** No. Because you haven't let us -- but --

7 **THE COURT:** Why couldn't you argue it right now?

8 **MR. KEKER:** Well, we can argue the first part of that,  
9 but what we also want to argue is the very powerful evidence  
10 that this was -- I mean, it's just there in the books. What  
11 they --

12 **THE COURT:** I understand that, but it is -- I think  
13 that's in.

14 **MR. KEKER:** And it was immediately apparent to  
15 Hewlett-Packard as soon as they looked at the -- at the work  
16 papers, they got access to the finances and it was reported to  
17 the senior level CFO. Ernst & Young comes in and says a  
18 hundred -- 11 percent is hardware sales, like hello.

19 **THE COURT:** But the difference is -- the difference is  
20 I think while the fact may be immediately apparent and I  
21 think -- by the way, that's in. I mean -- everything, books,  
22 records, everything goes over to them. I mean, they have  
23 access to all of these things, I think. I don't know whether  
24 they have the Deloitte papers or not, but they have the  
25 contracts, they have all of that. That's in.

1 But what isn't immediately apparent -- what is not  
2 immediately apparent is the impact, and the reason is that, you  
3 know, how is this whole thing going to perform? How is  
4 Autonomy going to do? And -- and let's run it out.

5 I think this last witness said look, there were some -- I  
6 think it was him. There was, you know, some concern that they  
7 didn't meet expectations in the first quarter and so forth.  
8 Well, then they have to try to figure out why didn't we. Now,  
9 if you say that it was immediately apparent -- but they say  
10 well, we wanted to run it out a bit, and then you get into the  
11 issue, well, maybe it was run out negligently.

12 I mean, Hewlett-Packard was in chaos, weren't they? I  
13 mean, they were firing chiefs, they were eavesdropping on each  
14 other. It was a mess over there. I mean, they were fighting,  
15 should Packard -- if he were in the garage today, what would he  
16 think. You know, I mean excuse me, I don't know. I don't  
17 know. But I know one thing. I don't want a "what would Jesus  
18 do." I don't want one of these things where you go back and  
19 try to reconstruct how people would have behaved if they had  
20 all the facts and circumstances known to them and this one fact  
21 was disclosed because I think it's -- it's a trial -- it's not  
22 even a trial within a trial. It's a -- it's a show. It's an  
23 unfettered look-back at how a company was operated, which I  
24 must say, Mr. Keker, was in part your opening argument, your  
25 opening statement, and I tried to say, not interrupting your

1 statement, I don't know whether we are going to get into any of  
2 that. And I've always been suspicious of that evidentiary  
3 approach, though I understand it was what you approached.

4 And I'm not going to -- we'll talk about argument later  
5 and so forth. I don't want you to be hung up by the Court. I  
6 mean, every lawyer knows when they make an opening statement  
7 that they are, quote, at risk, but I -- I -- I'm -- I'm of the  
8 opinion that you shouldn't make too much out of opening  
9 statements. And -- first of all, they're forgotten, and  
10 secondly they are expectations, and third, you shouldn't impair  
11 the credibility of an advocate by -- at the end of the case  
12 by -- by his statements at the beginning of the case.

13 You know, this wasn't an attempt by the defense to -- it  
14 wasn't an inappropriate opening, in my view. It was entirely  
15 appropriate. And it may very well have been based on an  
16 expectation that I would let in this kind of evidence.

17 **MR. KEKER:** Of course it was. Of course it was.

18 **THE COURT:** I don't want to hear any of that in  
19 closing. It's got to be at a very different level. But --  
20 that's my ruling. And I don't -- I don't feel it should come  
21 in.

22 **MR. LEACH:** There is one other matter, Your Honor.  
23 The defendant has noticed Lee Welham, the Deloitte auditor who  
24 came from England to testify in the Government's case.

25 His counsel is asking me does he really need to come. I

1 don't see how admission of the restatement somehow opens the  
2 door to a whole different source of topics.

3 **THE COURT:** It depends on what he is going to say.

4 **MR. KEKER:** Well, no, I think we need to reevaluate.  
5 In light of your -- we offered Sarin, Gersh, and Lee Welham to  
6 talk about things after October 3rd because the new ruling  
7 opened the door and we still believe very firmly that it has  
8 opened the door to things that we could have gotten out of them  
9 on direct. That's the subject of our motion about Exhibit 2451  
10 and 6463.

11 **THE COURT:** I appreciate that.

12 **MR. KEKER:** If your ruling is going to be that we  
13 can't talk about anything that happened after October 3rd, then  
14 I guess -- except -- except specifically about this guy and his  
15 restatement work, then I guess that's where we are and we have  
16 to go back and reevaluate these --

17 **THE COURT:** Well, my ruling is, so it's clear, that  
18 with respect to your proffer, I'm not going to permit it. I  
19 don't know other things. I mean, I -- I don't like to make --  
20 I don't like to make grander statements than they are. They  
21 are bad enough as they are and you can rely on the fact that  
22 what you have given to me I have ruled that I would not permit.  
23 And that's -- that's what the record is and there we are and I  
24 don't know about anything else, but that's what the record is.

25 **MR. KEKER:** Let me just be real -- real clear to make



1 sure that I understand it. In a case about -- that's partly  
2 about disclose of these hardware sales, we are proffering  
3 evidence to -- that these people who say that they didn't  
4 know -- either didn't care or did know because when they  
5 unquestionably just had it put in front of their face, they  
6 didn't squeak and nothing happened and they seemed nonplussed  
7 or they just ignored it.

8 So you're keeping out all that evidence --

9 **THE COURT:** Well, I think I may need a more detailed  
10 offer of proof from you. In other words, if you are saying X  
11 witness would come in and say "I did not know about the  
12 hardware sales, but when they were disclosed to me, I didn't  
13 care about the hardware sales because it wasn't important," if  
14 that's what you're saying, you have that witness who will come  
15 in and say that, I need to hear that. I haven't heard that  
16 yet. I haven't heard that any of these three people.

17 **MR. LEACH:** The "they" --

18 **MR. KEKER:** There is not a chance --

19 **MR. LEACH:** The "they" is very important, Your Honor.  
20 Manish Sarin testified "I asked questions during the diligence.  
21 When I found out about the hardware I was shocked."

22 We didn't get into it with Andy Gersh, but he would have  
23 said, "When I found out about the hardware sales, I was  
24 shocked."

25 **THE COURT:** They have to make an offer of proof. If

1 the offer of proof is "notwithstanding the fact that you were  
2 shocked, you didn't do anything," which is exactly what I think  
3 you're saying --

4 **MR. KEKER:** Yes.

5 **THE COURT:** And therefore you're not really shocked,  
6 the reason they didn't do anything, I believe, opens up a whole  
7 field of -- of testimony and evidence and conflicting facts.  
8 And that's what I'm saying and that's all I'm saying.

9 Now, if you -- if you -- a witness is -- if you have a  
10 witness who is going to say, you know, "when I heard about X,  
11 the hardware sales, I just didn't care."

12 **MR. KEKER:** The chances --

13 **THE COURT:** If you have that witness, bring it on.  
14 I'll listen to that witness.

15 **MR. KEKER:** Of course you will because everybody knows  
16 that no such witness could possibly exist because  
17 Hewlett-Packard circled the wagons starting in November of 2012  
18 and their wagons got circled around this concept that, "oh, my  
19 Lord, we didn't know about hardware sales. This is the most  
20 important thing in the world. It really matters to us. We  
21 really care about the margins," blah, blah, blah. That's their  
22 case. And our position is that's a made-up fraudulent case.  
23 It's completely wrong.

24 They were looking for something to justify this writedown.  
25 They got -- they had fouled up this merger to fare-thee-well.

1 Lynch was gone and they decided to make something that is not  
2 true -- it was never true that Leo Apotheker and the board  
3 cared one bit about whether or not EMC hardware was accounted  
4 for in this quarter or that quarter. They didn't care one bit  
5 about whether or not these bar transactions had occurred in  
6 some way. All of this is a Hewlett-Packard effort, now aided  
7 and abetted by the Government, in order to make a story that  
8 isn't -- to manufacture a case. It's bureaucrats manufacturing  
9 a case.

10 **THE COURT:** You're saying look, they never relied on  
11 it.

12 **MR. KEKER:** Yes.

13 **THE COURT:** And reliance is not an element.

14 **MR. KEKER:** Well, no, no, no, but it's also -- I'm  
15 saying a lot more than that.

16 **THE COURT:** Well, I think you are saying that. At  
17 bottom, I think you're saying they didn't rely on it because if  
18 they had relied on it, they would have done something about it  
19 right away. They didn't do anything about it right away, and  
20 therefore there was no reliance.

21 **MR. KEKER:** They knew about hardware. They knew  
22 plenty --

23 **THE COURT:** You can argue all that.

24 **MR. KEKER:** They knew about hardware and they didn't  
25 pursue it because they didn't care about it. That's different

1 from reliance.

2           **THE COURT:** And they didn't care about it is a  
3 complicated -- the reasons why they didn't care about it may be  
4 a very -- if they didn't -- I don't know whether they did or  
5 not. If they didn't, accepting your offer -- if they didn't  
6 can be a whole range of reasons.

7           And, you know, I think you made a good record. And I'm  
8 not -- I'm not being condescending. I think it is a good  
9 record. I will let you supplement it any way you want to  
10 supplement it. And there it is if the case goes -- if the case  
11 resolves. You know, if it goes -- if there's -- if there is a  
12 conviction. I have no -- and on that subject, of course I have  
13 no idea.

14           **MR. KEKER:** Okay.

15           **THE COURT:** So where are we --

16           **MR. KEKER:** Your Honor, can we get formally our motion  
17 about the Sarin and Gersh exhibits -- can we get that formally  
18 denied? I take it you're denying that motion.

19           **THE COURT:** Yes.

20           **MR. KEKER:** Okay.

21           **THE COURT:** I better look at it again, but --

22           **MR. KEKER:** No, it's --

23           **THE COURT:** -- I believe I am.

24           **MR. KEKER:** What it is, is post October 3rd exhibits  
25 that we would ask -- that Sarin and Gersh are on and we would

1 ask them about it, but now we can't.

2 And as I understand with respect to our witness, I can't  
3 ask her anything after October 3rd, and I'm accepting your  
4 ruling, but that's what I understand. We'll call Ms. Lesjak  
5 and I can't ask her anything that happened after that.

6 So if --

7 **THE COURT:** I don't know -- I don't know whether  
8 that -- I mean, I think you have to make -- when you say ask  
9 her anything after that, I have to have a better idea of like a  
10 question and an -- a question and what you think her answer  
11 would be.

12 **MR. KEKER:** "When you're presented by Ernst & Young  
13 with their report and it tells you 11 percent of the revenue is  
14 hardware and you're told this and that, did you do anything? I  
15 mean, what did you do? What did you think when you were told  
16 that? What was the problem? You're the one who has been  
17 through -- you knew that they sold appliances. You knew they  
18 had been through due diligence. You knew this thing was sold  
19 by Mr. Apotheker because of the software component and here you  
20 find out there is some -- there is some 10 percent of the  
21 revenues are hardware. Like what did you do?"

22 **THE COURT:** Mr. Leach.

23 **MR. LEACH:** I thought that is exactly what we just  
24 talked about, Your Honor.

25 **THE COURT:** I thought so. But maybe Mr. Keker said it

1 better this time than he said it last time.

2 **MR. KEKER:** If you say it over and over again,  
3 eventually --

4 **THE COURT:** You start to believe it. That's what  
5 happens with me. Okay. You have your rulings.

6 **MR. KEKER:** Okay. All right.

7 **THE COURT:** I think you have your rulings.

8 So where does this leave us?

9 **MR. KEKER:** It leaves us -- we've got a stipulation  
10 about stock prices and -- Hewlett-Packard stock prices and  
11 Autonomy stock prices which are filed, but we would like to  
12 present them to the jury.

13 **THE COURT:** Of course.

14 **MR. KEKER:** And then we've got -- we talked about this  
15 before. We have John Cronin phone records. We've marked them  
16 as 5685-A.

17 **MR. LEACH:** We intend to offer them through Special  
18 Agent Bryant, Your Honor, the phone records Mr. Keker is  
19 talking about. There is no objection to them.

20 **MR. FRENTZEN:** We've marked them and they know we  
21 marked them and we are going to put them in tomorrow.

22 **MR. KEKER:** Well, we marked them and we would like to  
23 put them in. So --

24 **MR. FRENTZEN:** We're putting them in tomorrow.

25 **THE COURT:** Here is the problem. Going back to your

1 point, Mr. Keker, about Ms. Lesjak, when you say you can't --  
2 she got all these documents -- it's not your proposal just to  
3 ask her the question, "Well, what did you think?" Your  
4 proposal is to ask her the question, "In light of what you  
5 thought" -- you expect her to say, "I was shocked" or you  
6 expect her to say, "I didn't realize that there were these  
7 sales" or you expect her to somehow corroborate the  
8 Government's theory?

9 **MR. KEKER:** Absolutely. There is no question.

10 **THE COURT:** Okay. Then you have the follow-up  
11 question. That's the thing I'm concerned about. "Well, what  
12 did you do, thinking that it was so horrible?"

13 **MR. KEKER:** I can stop -- that's my offer before. I  
14 can stop after getting out this --

15 **THE COURT:** Well, "After you were told" -- I'm not  
16 sure I give the reports -- the reports go into evidence, but I  
17 think you could say "After" -- "After you were told or at some  
18 point you were told that the hardware sales were a hundred --  
19 were of the type that the Government says they were" or  
20 whatever that amount is, 100 million, 50 million. You know,  
21 "What did you think?"

22 I mean, obviously if she thought "Well, you know, that  
23 didn't surprise me at all. As a matter of fact, I thought" --

24 **MR. KEKER:** She will say she thought they were  
25 appliances.

1           **THE COURT:** Of course she is not going to say that.  
2       She is going to say "I was shocked."

3           **MR. KEKER:** Or she is going to say "I thought they  
4       were appliances" or "I didn't notice it."

5           **THE COURT:** She will say, "I was devastated." Okay.  
6       Now, at that point -- and this is why you don't want to do it,  
7       I think. At that point, the questioning stops; that is, I  
8       wouldn't allow the question about, "Well, being devastated or  
9       surprised or shocked or -- what did you do about it," because  
10      actually what you want to do is impeach the veracity of her  
11      statement that she was shocked. That's the whole point of it.  
12      I understand that because your contention is they knew it all  
13      along and this simply confirmed either that -- that she knew it  
14      all along or it didn't make any difference.

15           **MR. KEKER:** Didn't care. They didn't care.

16           **THE COURT:** Didn't make any difference.

17           Okay. And that's where I'm drawing the line because it  
18      seems to me what she did afterwards is a complicated -- it's a  
19      very complicated subject, and it opens the door to all sorts of  
20      other evidence.

21           And it -- by the way, it's evidence that goes back and  
22      forth and back and forth and back and forth, "Well, I didn't do  
23      it because of X." So then in comes X, and they say, "Well, X,  
24      no, that wasn't all that important." And she says, "Well, I  
25      thought maybe Y would occur, or then I had responsibilities to



1 the board, or I had this or that and a thousand things."

2 So that's where I am drawing the line. You want a nice  
3 line? That's where I'm drawing the line. You want to ask her  
4 "When did you find out and what was your reaction when you  
5 found out," have at it; but the next part, no.

6 Okay. So is that clear? I don't --

7 **MR. KEKER:** I think it's clear.

8 **THE COURT:** I don't think I'm doing you necessarily  
9 any favors.

10 **MR. KEKER:** I don't think you are either, but I can  
11 ask her -- and we do have an exhibit. She was -- it's a  
12 PowerPoint that EY gave to the CFO that -- and we'd like -- we  
13 would offer that exhibit into evidence.

14 **THE COURT:** Have you seen it?

15 **MR. KEKER:** You've got it in that pile. That's one of  
16 the --

17 **MR. LEACH:** I've seen the exhibit, Your Honor. It's a  
18 PowerPoint from Ernst & Young to Ms. Lesjak in November of  
19 2011.

20 **MR. KEKER:** It's one of the exhibits that you asked us  
21 to gather up.

22 **THE COURT:** Right. Do you know what number it is?

23 **MR. KEKER:** It is 8234 and it's page 7 -- I mean, the  
24 thing we would show her is look at page 7 of that exhibit.  
25 This was presented by E & Y to the -- the cover email talks

1 about "We completed the review of the" --

2 **THE COURT:** I just don't seem to have 8234. Do I have  
3 it?

4 **MR. KEKER:** We -- can I --

5 **MS. LAZARUS:** Which exhibit are you looking for?

6 **MR. KEKER:** We are looking at the Betsy Branch, Brian  
7 Outland 11/9/11.

8 **THE COURT:** I don't have 8234.

9 **MS. LAZARUS:** I don't think it's in the file.

10 **MS. LITTLE:** It's not one of the ones he asked for.

11 **MR. KEKER:** Oh, okay. I can hand -- here it is.

12 **THE COURT:** Show it to the Government.

13 Have you seen it?

14 **MR. KEKER:** I know they've seen it.

15 **MR. LEACH:** I think I have, but if I could just look  
16 at it briefly.

17 (Pause in proceedings.)

18 **MR. KEKER:** There are other similar ones right around  
19 the same time, but the cover --

20 **THE COURT:** It's your idea to show this to her?

21 **MR. KEKER:** Yes. The cover email and then the --

22 **THE COURT:** Let me see it.

23 **MR. KEKER:** -- red tab page.

24 (Pause in proceedings.)

25 **MR. KEKER:** The red tab is part of the PowerPoint that

1 they got, and there is a bar chart that shows hardware. It's  
2 hard to read but it says 11 percent hardware. It's the revenue  
3 allocation. This was after looking at the Deloitte work  
4 papers.

5 **THE COURT:** This was a document she received when?

6 **MR. KEKER:** November of 2011. It's about a month  
7 after the closure.

8 **THE COURT:** Okay. And you're not -- you're not  
9 representing to me that you would argue that having been told  
10 that on -- whatever date this is. What date did we say it was?

11 **MR. KEKER:** November.

12 **THE COURT:** November 11th. It took them a year to  
13 restate, or whatever they did, a year, year and a half but the  
14 timing is not relevant. It's the fact --

15 **MR. KEKER:** I won't argue whatever you tell me I can't  
16 argue. We will --

17 **THE COURT:** Well, I want to ask you whether you  
18 intended to argue it.

19 **MR. KEKER:** Well, no, I mean, if you say we can't  
20 argue --

21 **THE COURT:** I think you can't. I think that would be  
22 inconsistent with the Court's ruling because that would allow  
23 the jury to speculate on the very thing that actually you think  
24 is important --

25 **MR. KEKER:** Right.

1           **THE COURT:** -- I give you that, and which I think  
2 ought not to be considered by the jury. That's -- that's where  
3 we vary. So if you want to -- yes, you could certainly ask her  
4 about this, when she got this, what was her reaction, period.

5           **MR. KEKER:** And then not argue that it took them a  
6 year to do anything. I get it. Okay. That's fine.

7           Can I have that back?

8           **THE COURT:** When you say you get it, that means you  
9 agree with me. No. I'm being facetious.

10          **MR. KEKER:** I understand you and will obey the rules.

11          **THE COURT:** No, of course you will. I mean, I  
12 appreciate that. I understand that. I mean, nobody --  
13 that's --

14          **MR. KEKER:** Okay. Well, we'll see --

15          **THE COURT:** But I will say, Mr. Keker, I think that  
16 looking at that document, I don't know that it particularly in  
17 that context will help, but that's up to you. You have to make  
18 a trial decision on that.

19          **MR. KEKER:** Okay.

20          **THE COURT:** Okay. So where are we at 5:00?

21          **MR. KEKER:** We're I think we have -- we have these  
22 Cronin records that we want to put in that we'd agreed to, and  
23 so we just need you to say they're in. 5685A --

24          **MR. FRENTZEN:** No, Your Honor. We're introducing  
25 them -- we talked about this -- we're introducing them in our

1 case tomorrow through the agent.

2 **MR. KEKER:** They don't have -- their records look  
3 different than these, and they don't have the --

4 **THE COURT:** Look, you know what?

5 **MR. KEKER:** -- chart.

6 **THE COURT:** Okay. Now, Mr. Keker, of the three  
7 Government lawyers, which do you get along the best with?

8 **MR. KEKER:** I get along with Mr. Frentzen the best.  
9 The other two are brutes, Your Honor.

10 **THE COURT:** Okay. That's what I thought. So I would  
11 like you --

12 **MR. LEACH:** Crude and aiding and abetting of fraud all  
13 in one day. Thank you, Mr. Keker.

14 **THE COURT:** -- I would like you to meet and see if you  
15 can arrive at an agreement because apparently they're going in;  
16 and if you want to say they're going in jointly, I don't care.  
17 You know, I mean, I don't care.

18 **MR. FRENTZEN:** I plan on introducing them tomorrow  
19 through the agent's testimony, and I will introduce them in any  
20 form that they want.

21 **THE COURT:** Okay.

22 **MR. KEKER:** And then we have these two stipulations  
23 about --

24 **THE COURT:** You can read that.

25 **MR. KEKER:** -- stock prices, which are -- which are

1 filed. I mean, they are court filed.

2 **THE COURT:** They have to be read to the jury in some  
3 form.

4 **MR. KEKER:** Okay.

5 **THE COURT:** I always want a stipulation to be read to  
6 the jury in some form, abbreviated, summarized --

7 **MR. KEKER:** Just stand up and tell them?

8 **THE COURT:** Yes. Just tell them and that shows them  
9 how everybody gets along.

10 Okay. So if, under my restrictive rules, if in fact it  
11 goes that way, do we anticipate that all the evidence will be  
12 in tomorrow? Am I -- am I --

13 **MR. KEKER:** Let me think about it.

14 **THE COURT:** Okay. Tomorrow or Thursday morning, or  
15 something like that.

16 **MR. KEKER:** Yes. I think tomorrow or Thursday is a  
17 safe bet.

18 **THE COURT:** Yeah.

19 Okay. So now --

20 **MR. KEKER:** Can we talk now about how long the  
21 Government wants to argue the case?

22 **THE COURT:** Okay. Let's talk a little bit -- let's  
23 just talk a little bit about instructions.

24 I'll go through them tonight -- I have the objections, and  
25 so forth and so on -- and try to come up tonight with what the

1 Court thinks are the appropriate instructions and give them to  
2 you as proposed jury instructions.

3 But they're important as we all know, and so I want you to  
4 take some time and look at it and then give me your comments,  
5 which can be orally. They don't have to be in writing. But we  
6 should have a conference -- try to have a conference, if we  
7 can, tomorrow and I guess at the latest Thursday, so that the  
8 parties can have it, have it in mind, and over the weekend  
9 prepare their closings.

10 **MR. KEKER:** Thursday would be better --

11 **THE COURT:** That's fine.

12 **MR. KEKER:** -- because we'll be in court tomorrow.

13 **THE COURT:** That's fine.

14 **MR. LEACH:** That's fine with the Government,  
15 Your Honor.

16 **THE COURT:** So what is it you want to know about --

17 **MR. KEKER:** I want to know how -- what -- I've gotten  
18 your ruling that we're going to have equal time. I want to  
19 know how much the Government wants. We're probably willing to  
20 do it on the shorter side, but I have a feeling they're on the  
21 longer side so we'll go longer.

22 **THE COURT:** Well, this is the way I look at it: The  
23 Government has the burden but, of course, they get the  
24 rebuttal. And just have operated on the procedure the  
25 Government says "I want three hours for my argument," they have

1 to divide it in some manner that leaves them time to argue at  
2 the end.

3 Now, if they say four hours, that's easier for them. And  
4 the only understanding -- a couple things. Number one,  
5 basically I'll give the Government the amount of time it  
6 needs -- it says it needs; two, I'll give the Defense the same  
7 amount of time; and, three, the Defense will not be placed in a  
8 position where the Government, given the last word, gets to  
9 address the jury on a day separate from what the Defense said.

10 So those are sort of the guidelines. I think the only  
11 situation we're going to run into is the juror who has to leave  
12 and I think she probably does have to leave. So I would --  
13 whatever that day comes, wherever we are in the case, assuming  
14 I still have three, I'll substitute her out and put in one of  
15 the three.

16 **MR. KEKER:** We -- I mean, so can we just get from the  
17 Government what they -- what --

18 **THE COURT:** I think they don't know right now. They  
19 want to talk about how they'll allocate. Again, you can  
20 allocate any way you want to argue. Somebody can do ten  
21 minutes, somebody can do an hour. Any way you want to do it.

22 **MR. KEKER:** Could we get the number tomorrow, though?

23 **THE COURT:** Is Cody going to argue this?

24 **MR. KEKER:** Cody is going to argue the meat. I'm  
25 going to take some of the fluff.



1           **THE COURT:** There you go.

2           Okay. All right. Anyway, that's fine.

3           **MR. KEKER:** Can we get the number tomorrow? I mean,  
4 ask them to tell us tomorrow?

5           **THE COURT:** Well, I don't know tomorrow. You'll get  
6 it -- I think you have to get it by Thursday. I think you have  
7 to --

8           **MR. KEKER:** That's good.

9           **THE COURT:** -- so you can sit down and plan your  
10 argument. You may have exhibits. You may have PowerPoints.  
11 You can do anything. You could have any type of arrangement  
12 you like. You know, a day in the life of the trial, that would  
13 be fascinating. You can do any of those things, anything that  
14 would be appropriate.

15           Have we worked out the question, I don't know why this is  
16 bugging me, but the question about how we're going to deal with  
17 all these exhibits?

18           **MR. KEKER:** We have worked out an index, and our  
19 problem we've been slowed down because Ms. Bringola is in such  
20 bad shape, but we can get -- I think we all know what we're  
21 going to try to do, which is get an index.

22           **THE COURT:** Okay. So how are you going to argue to  
23 the jury? Are you going to say to the jury, "On point number  
24 one or on this particular point that I'm arguing, please make a  
25 note that it's Exhibit No. 28, 29, 30 and 31"?

1 I just think -- and I'm not telling you how to do it,  
2 though that sounds like I am. I've seen so many arguments in  
3 the last 21 years where lawyers get up and they talk about,  
4 especially in long cases, they talk about the case and there  
5 are a hundred exhibits or 50 exhibits or a thousand exhibits  
6 and there's no way in the jury room they could possibly find  
7 the exhibit. And what happens is I get a letter from the  
8 jury -- a note from the jury that says "Could we please see the  
9 PowerPoint that was given to us in closing arguments that  
10 listed all of those exhibits?"

11 Now, I can tell the jury before argument that it may be  
12 useful in this case when an attorney argues a particular point,  
13 cites a particular exhibit, please make a note because if it  
14 becomes relevant to your discussions, determinations, the  
15 exhibits will be there.

16 We're giving them the hard copies; right? Is anybody  
17 thinking we have to give them the electronics?

18 **MR. LEACH:** We do need to get them electronic copies,  
19 Your Honor. There have been a number of native files. I think  
20 Mr. Dooley was working from some today. I think the plan is to  
21 put them all on one CD or media that can be reviewed by a  
22 computer.

23 **THE COURT:** Okay. We can say that. And I think -- is  
24 the process where we -- I mean, I don't know how advanced we  
25 are in there. Do we send in a -- what do we do, Lashanda?

1           **THE CLERK:** I ordered the jury cart to be delivered  
2 here.

3           **THE COURT:** The jury cart.

4           **THE CLERK:** Yes. For Friday. It will be here 1:00 on  
5 Friday.

6           **THE COURT:** Okay. So why don't you sit down. I  
7 really think you want this to go smoothly, and so Friday  
8 afternoon when I won't be here why don't you take a look and  
9 see if you can all agree on the electronics, and so forth, and  
10 that will be fine.

11           **MR. LEACH:** We will, Your Honor.

12           **MR. KEKER:** Okay. Thank you.

13           **MR. LEACH:** Thank you.

14           **MR. REEVES:** Thank you, Your Honor.

15           **MR. KEKER:** See you tomorrow.

16                   (Proceedings adjourned at 5:13 p.m.)

17                   ---oOo---

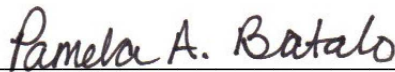
CERTIFICATE OF REPORTERS

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

DATE: Tuesday, April 17, 2018

A handwritten signature in black ink, appearing to read "Jo Ann Bryce", written over a horizontal line.

Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR  
U.S. Court Reporter

A handwritten signature in black ink, appearing to read "Pamela A. Batalo", written over a horizontal line.

Pamela A. Batalo, CSR No. 3593, RMR, FCRR  
U.S. Court Reporter